



**STATE OF IOWA**  
**MASTER AGREEMENT**  
 Contract Declaration and Execution

EFFECTIVE BEGIN DATE: 08-11-2008  
 EXPIRATION DATE: 09-30-2011  
 PAGE: 1 of 3

**VENDOR:**

Midland Systems Integ  
 PO Box 30127

Omaha, NE 68103-1127  
 USA

**VENDOR CONTACT:**

Deony Gass  
 PHONE: 515-246-4112 EXT:  
 EMAIL: dgass@mslinet.com

FOB FOB Dest, Freight Prepaid

**ISSUER:**

ASHLEY SUPER  
 PHONE: 515-281-7073  
 EMAIL: ashley.super@iowa.gov

**Contract For: IBM Products and Services**

Contract for all IBM Products and Services per the Terms and Conditions of RFP # 808005440 (attached) except for the few exceptions listed in the attached MSI Technical Proposal, page 38. Terms and Conditions may be negotiated at customer's option on an as needed basis. See MSI Cost Proposal attached for all prices and rates. Customer may negotiate license, warranty and maintenance terms and conditions direct with IBM as needed.

**RENEWAL OPTIONS**

FROM 10-01-2011 TO 09-30-2012  
 FROM 10-01-2012 TO 09-30-2013  
 FROM 10-01-2013 TO 09-30-2014

**AUTHORIZED DEPARTMENT**

ALL  
 SUB Other Governmental Entities

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		STATE OF IOWA	
CONTRACTOR'S NAME (If other than an individual, state whether a corp., partnership, etc.)		AGENCY NAME	
MSI Systems Integrators, Inc - NE		IA Dept of Admin Services GSE Purchasing	
By (Authorized Signature)	Date Signed	By (Authorized Signature)	Date Signed
<i>Phil Sauvageau</i>	8/5/08	<i>Ashley Super</i>	8/5/08
Printed Name and Title of Person Signing		Printed Name and Title of Person Signing	
Phil Sauvageau, Chief operating officer		Ashley Super, PAM	
Address		Address	
14301 First National PKwy, #400 Omaha, NE 68154		Hoover State of IB/dg level A, Des Moines, IA	



STATE OF IOWA  
MASTER AGREEMENT  
Contract Declaration and Execution

MA# 005 3427-09

EFFECTIVE BEGIN DATE: 08-11-2008  
EXPIRATION DATE: 09-30-2011  
PAGE: 2 of 3

LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000	204		\$0.000000
				\$0.000000
			COMPUTER HARDWARE AND PERIPHERALS FOR MICROCOMPUTERS	
			IBM COMPUTER HARDWARE AND PERIPHERALS FOR MICROCOMPUTERS	
2	0.00000	206		\$0.000000
				\$0.000000
			COMPUTER HARDWARE AND PERIPHERALS FOR MINI AND MAIN FRAME CO	
			IBM COMPUTER HARDWARE AND PERIPHERALS FOR MINI AND MAIN FRAM	
3	0.00000	207		\$0.000000
				\$0.000000
			COMPUTER ACCESSORIES AND SUPPLIES	
			IBM COMPUTER ACCESSORIES AND SUPPLIES	
4	0.00000	91828		\$0.000000
				\$0.000000
			Computer Hardware Consulting	
			IBM Computer Hardware Consulting and Services	



**STATE OF IOWA**  
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**MA# 005 3427-09**

**EFFECTIVE BEGIN DATE:** 08-11-2008  
**EXPIRATION DATE:** 09-30-2011  
**PAGE:** 3 of 3

**TERMS AND CONDITIONS**

**N60**  
NET 60 DAYS



# IBM Hardware, Software, and Services

## Technical Proposal

*Prepared for*

*Iowa Department of  
Administrative Services*

*Submitted By*

Denny Gass  
MSI Systems Integrators

April 21, 2008

MSI Systems Integrators

2600 Westown Parkway ▪ Suite 210 ▪ West Des Moines, IA 50266 ▪ 800.640.4674 ▪ [www.msii.net](http://www.msii.net)

2600 Westown Parkway  
Suite 210  
West Des Moines, IA 50266  
515.246.4100  
800.640.4674



April 21, 2008

Ms. Ashley Super  
Purchasing Agent III  
Iowa Department of Administrative Services  
GSE Purchasing Division  
Hover State Office Building - Level A  
Des Moines, IA 50319-105

Dear Ms. Super:

**Proposal to Provide IBM Hardware, Software, and Services**

MSI Systems Integrators, Inc., (MSI) is pleased to submit this proposal to provide IBM Hardware, Software, and Services to Iowa Department of Administrative Services, (IDAS). The services and pricing proposed herein incorporate IDAS' objectives of improving the quality, flexibility, and effectiveness of its IT services to its end users and customers.

We believe we have an understanding of the service and cost objectives to be attained, and we are confident of our ability to carry out this assignment on every plane. This proposal will clearly identify MSI as being uniquely qualified to be IDAS' IT partner.

We would be pleased to meet with you and other senior management of IDAS, at your earliest convenience, to discuss this proposal. We look forward to partnering with IDAS on this important and challenging opportunity

Contacts		
	Primary	Alternate
Name	Denny Gass	Ken Baker
Address	2600 Westown Parkway Suite 210 West Des Moines, IA 50266	2600 Westown Parkway Suite 210 West Des Moines, IA 50266
Email	<a href="mailto:dgass@msiinet.com">dgass@msiinet.com</a>	<a href="mailto:kbaker@msiinet.com">kbaker@msiinet.com</a>
Fax	515.246.4190	515.246.4190
Phone	515.246.4112	319.373.1882

The pricing contained in this proposal is effective for a period of 180 days following the date of this proposal and is subject to the terms and conditions of an agreement between IDAS and MSI.

Sincerely,

Denny Gass  
Client Executive

# REQUIREMENTS CHECKLIST

RFP REFERENCE	RESPONSE INCLUDED		LOCATION OF RESPONSE
	Yes	No	
One Original & 5 copies of Technical Proposal	X		
One copy of above Technical Proposal on CD	X		
Separately Sealed Cost Proposal (Attachment 10)	X		
Public Copy of Technical Proposal (if any)		X	
One Copy of above Public Copy (if any) on CD		X	
4.2.1 Transmittal Letter	X		Previous Page
4.2.3 Table of Contents	X		Following this table
4.2.4 Executive Summary	X		
4.2.5 Background Information	X		
4.2.6 Service Requirements	X		
3.2 Vendor Requirements:	X		
3.2 - 1 Three References	X		
3.2 - 2 Certified IBM Partner	X		
3.2 - 3 Complete family of IBM products	X		
3.2 - 4 Resumes of personnel	X		
3.2 - 5 Financials	X		
3.2 - 6 Corp Info	X		
3.2 - 7 Contact Info	X		
3.2 - 8 On-line ordering	X		
3.2 - 9 Enterprise Standards	X		
3.2 - 10 Mandatory Contract Conditions	X		
3.2 - 11 Inform of Offers	X		
3.2 - 12 Electronic Payments	X		
3.3 Hardware Requirements	X		
3.3a Discount off list pricing structure	X		
3.3b Warranted as new	X		
3.3c Substitutions	X		
3.3d Best price	X		
3.3e Web accessible catalog		X	
3.3f No cost options	X		
3.3g Full USA standard OEM warranty	X		
3.3h Extended maintenance	X		
3.4 Software Requirements	X		
3.4a Discount off list pricing structure	X		
3.4b Valid product licenses	X		
3.4c Educational materials	X		
3.4d Full USA OEM warranty	X		
3.4e Evaluation copies	X		
3.4f Extended maintenance	X		
3.4g & h VLAs / LPs	X		
3.5 Services Requirements	X		
3.5a associated services	X		
3.5b non-IBM related products or services	X		
3.5c System Integration	X		
3.5d No cost technical support	X		
3.5e Additional technical support	X		
3.5f sales assistance	X		
3.5g marketing plan	X		

RFP REFERENCE	RESPONSE INCLUDED		LOCATION OF RESPONSE
	Yes	No	
3.5h extended maintenance service options	X		
3.6 Leasing Requirements	X		
3.6a, b & c Describe your leasing program	X		
3.6d Re: fair-market-value	X		
3.6e No lease/purchase	X		
3.7 Proposal Requirements	X		
3.7A Proposal Summary	X		
3.7B Work Plan	X		
3.7C Product Catalog and Pricing		X	
4.2.7 Company Experience & Qualifications	X		
4.2.8 Personnel	X		
4.2.9 Financial Information	X		
4.2.10 Termination, Litigation, and Investigation	X		
4.2.11 Acceptance of Terms and Conditions	X		
4.2.12 Certifications 1 through 8	X		
4.2.13 Firm Bid Proposal Terms	X		

# Iowa Department of Administrative Services IBM Hardware, Software, and Services Proposal

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# Iowa Department of Administrative Services

## IBM Hardware, Software, and Services Proposal

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## SECTION 1

**EXECUTIVE SUMMARY****4.2.4 Executive Summary**

The bidder shall submit an executive summary that briefly reviews the strengths of the bidder and key features of its proposed approach to meet the requirements of this RFP.

Iowa Department of Administrative Services (IDAS) is seeking to determine the relative merits of a master contract for all IBM hardware, software, and services.

MSI Systems Integrators, Inc., (MSI) strongly believes it has the experience, focus, and service approach necessary to be IDAS vendor of choice for this contract:

- MSI has served as the State's IBM supplier for the past several years. MSI understands the State technical environment and its standards and its requirements.
- MSI has local presence within Iowa. With offices in Des Moines and Cedar Rapids, and over 30 employees in the State, MSI offers focused attention on this account. In addition, our headquarters in Omaha, Nebraska allows the Iowa branches to draw on over 250 employees (at headquarters) that are within a few hours of the State's offices should any situation arise which requires additional support.
- MSI is a Premier IBM Partner
  - This is highest level of partnership IBM offers
  - MSI is authorized to sell IBM's entire line of hardware and software products across all platforms.
  - MSI has received many awards from IBM in the Blue Diamond and Beacon awards, which recognized MSI's innovation and commitment to customer service.

SECTION 2

## **BACKGROUND INFORMATION**

### **NAME AND ADDRESS**

**4.2.5.1** Name, address, telephone number, fax number and e-mail address of the bidder including all doing business as or assumed names or other operating names of the bidder.

Corporate Headquarters  
MSI Systems Integrators, Inc.  
14301 First National Parkway  
Suite 400  
Omaha, NE 68154  
Phone: 402.965.2300  
Fax: 402.965.2410

Regional Office serving the State of Iowa  
MSI Systems Integrators, Inc.  
2600 Westown Parkway  
Suite 210  
West Des Moines, IA 50266  
Phone: 515.246.4100  
Fax: 515.246.4190

The representative the IDAS account is Denny Gass and his email address is [dgass@msiinet.com](mailto:dgass@msiinet.com).

MSI is not doing business under any other name.

### **FORM OF BUSINESS**

**4.2.5.2** Form of business entity, i.e., corporation, partnership, proprietorship, Limited Liability Company.

MSI is privately held corporation.

## **STATE OF INCORPORATION**

### **4.2.5.3 State of incorporation, state of formation, or state of organization.**

MSI is incorporated in the State of Nebraska.

## **OTHER OFFICES**

### **4.2.5.4 Identity and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the bidder's performance under the terms of this RFP.**

MSI has several other offices, however, its is believed that only its headquarters and the regional office listed above in the Name and Address subsection will be involved in the delivery of products and services related to this proposal.

## **LOCAL OFFICE**

### **4.2.5.5 Local office address and telephone number (if any).**

The local office is listed above in the Name and Address subsection.

## **NUMBER OF EMPLOYEES**

### **4.2.5.6 Number of employees.**

MSI has over 500 employees.

## **TYPE OF BUSINESS**

### **4.2.5.7 Type of business.**

MSI is a full service systems integrator.

**REPRESENTATIVE FOR CONTRACTUAL AND TECHNICAL MATTERS**

**4.2.5.8** Name, address and telephone number of the bidder's representative to contact regarding all contractual and technical matters concerning this proposal.

Name	Denny Gass
Address	2600 Westown Parkway Suite 210 West Des Moines, IA 50266
Email	<a href="mailto:dgass@msiinet.com">dgass@msiinet.com</a>
Fax	515.246.4190
Phone	515.246.4112

**REPRESENTATIVE FOR SCHEDULING AND OTHER ARRANGEMENTS**

**4.2.5.9** Name, address and telephone number of the bidder's representative to contact regarding scheduling and other arrangements.

Name	Denny Gass
Address	2600 Westown Parkway Suite 210 West Des Moines, IA 50266
Email	<a href="mailto:dgass@msiinet.com">dgass@msiinet.com</a>
Fax	515.246.4190
Phone	515.246.4112

**ACCOUNTING FIRM**

**4.2.5.10** Identify the bidder's accounting firm.

MSI's accounting firm is Lutz and Company.

**FEIN NUMBER**

**4.2.5.11** State bidder's Federal Employer Identification Number (FEIN). The successful bidder will be required to register to do business in Iowa.

MSI's FEIN number is 47-0781837. MSI is registered to do business in Iowa.

## SECTION 3

***SERVICE REQUIREMENTS*****4.2.6 Service Requirements**

The bidder shall address each service requirement in Section 3 and explain how it plans to approach each requirement. Bidders are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, examples, processes, and procedures. Bid proposals must be fully responsive to the service requirements in Section 3. Merely repeating the requirement will be considered non-responsive and disqualify the bidder. Bid proposals must identify any deviations from the requirements of this RFP the bidder cannot satisfy.

**REFERENCES****3.2 Vendor Requirements**

DAS GSE has identified the following vendor requirements:

1. REFERENCES: Contractor proposals must include a minimum of three (3) current client references where the contractor holds a similar contract of similar size and scope. State contact person, Mailing address, Email address telephone and FAX numbers in the proposal.

Below are our references

Apr. 8. 2008 2:28PM AIS System Support

No. 0334 P. 1/1

Ms. Ashley Super, PA III  
Iowa Department of Administrative Services  
General Services Enterprise  
Hoover State Office Building, Level A  
1305 East Walnut Street  
Des Moines, IA 50319-0105

The Illinois State University has utilized MSI Systems Integrators for the purpose of facilitating acquisitions of IBM OEM Hardware, Software, Accessories and Services for the past 4 years.

We have been very satisfied with the performance of MSI Systems Integrators in providing these products, services and support.

For additional information, please contact:

Name Eric Hodges

Title Director, Systems Support Office

Telephone 309-438-3871

Fax 309-438-5078

E-mail address ebhodge@ilstu.edu

Signed: 

Ms. Ashley Super, PA III  
Iowa Department of Administrative Services  
General Services Enterprise  
Hoover State Office Building, Level A  
1305 East Walnut Street  
Des Moines, IA 50319-0105

The University of Iowa Hospitals and Clinics has utilized MSI Systems Integrators for the purpose of facilitating acquisitions of IBM OEM Hardware, Software, Accessories and Services for the past several years.

We have been satisfied with the performance of MSI Systems Integrators in providing these products, services and support, and have contracted at various times for additional systems implementation support of IBM products.

For additional information, please contact:

Name Neil Nuehring

Title Operations Manager

Telephone 319-356-1934

Fax 319-356-3521

E-mail address neil-nuehring@uiowa.edu

Signed: 



April 17, 2008

Ms. Ashley Super, PA, III  
Iowa Department of Administrative Services  
General Services Enterprise  
Hoover State Office Building, Level A  
1305 East Walnut Street  
Des Moines, IA 50319-0105

Dear Ms Super:

Dakota County, MN has utilized MSI Systems Integrators for the purpose of facilitating acquisitions of IBM OEM hardware, software, accessories and services for the past three years.

We have been very satisfied with the performance of MSI Systems Integrators in providing these products, services and support.

For additional information, please contact me:

Michael Baumgartner  
Operations and Technical Support Manager -- Mainframe  
Dakota County Government Center  
1590 Highway 55  
Hastings, MN 55033

Telephone: 651-438-4574

Fax: 651-438-8363

E-mail address: [mike.baumgartner@co.dakota.mn.us](mailto:mike.baumgartner@co.dakota.mn.us)

Signed: Michael H. Baumgartner

**CERTIFIED IBM PARTNER**

2. The contractor must be a Certified IBM Partner (Value Added Re-Seller) in good standing. Vendors must provide proof of certification/authorization within their proposal.

MSI is Premier Partner with IBM. This is the highest level of partnership available from IBM.

MSI is authorized to sell IBM complete line of hardware, software, and services.

On the following page is MSI proof of certification.



Date printed: April 30, 2007

This certificate is presented to:

MSI Systems Integrators, Inc.



This is to certify that you have fulfilled the requirements set forth by IBM Corporation as an IBM Premier Business Partner. IBM recognizes your continued commitment to excellence and leadership. You have proven expertise in creative problem-solving, solutions development, innovative services and IBM technologies.

A handwritten signature in blue ink, appearing to read "Ravi", with a horizontal line underneath.

Ravi Marwaha  
General Manager, IBM Global Business Partners



### **VENDOR OFFERS IBM COMPLETE LINE OF PRODUCTS**

3. Proposals will be accepted only from vendors who offer the complete family of IBM products, software and services for all platforms, all others shall be deemed non-compliant and will subsequently be rejected.

MSI is authorized to sell IBM complete line of hardware, software, and services for all platforms.

### **VENDOR PERSONNEL ASSIGNED TO THE CONTRACT**

4. Personnel assigned by the contractor shall possess cumulative experience in managing and delivering IBM server products services. Contractor proposals shall include the identity and resumes of personnel that will be assigned to support the contract. The State reserves the right to review and approve contractor/sub-contractor personnel prior to their assignment and to request changes of selected personnel after their assignment.

Denny Gass will be assigned to the contract. Mr. Gass is responsible for managing the current contract with the State of Iowa CT2825MV.

### **FINANCIAL STATEMENT**

5. Vendor must provide a current Annual Report to Stockholders or a statement of financial condition.

The embedded file is our most recent audit financial statement.



MSI 2007 Audited  
Financials.pdf

### **CORPORATE OVERVIEW**

6. Vendor must include basic corporate information to include, but not be limited to size, date of incorporation, staffing and warehouse locations.

In the early 1990s, the technology vendors were moving away from selling directly to customer organizations to using channel partners and resellers as the primary connection to the vendors' customers. In

1994, three IT sales managers came together and incorporated MSI on the premise the IT industry was primarily a service industry and customers needed more than just product quotes. MSI also felt that comprehensive hardware and software solutions required a system integrator to assist organizations in determining the best technology for them, and to aid in integrating that technology into the customers' environments. Since that time MSI has become a leading comprehensive solution provider of hardware, software and services.

Through the years, MSI has continued to steadily grow across multiple technology verticals as customers have exceedingly embraced the MSI sales and service model. Today MSI offers products and services in the areas of:

- Storage
- Servers (e.g. System z, System p, System i, System x)
- Networking (Cisco, f5)
- Data center facility services
- Business continuity
- Enterprise software (e.g., Linux, WebSphere)
- Content management
- Application development (e.g., Microsoft, Java)
- Project management
- Security



MSI has established a reputation as a national provider of high quality, cost-effective integration services, and prides itself on being more of a partner and less of a vendor to its customers. Capital, management systems, and local professional staff and facilities—all are focused on the delivery of high-performance, low-cost integration services.

We have a base of thousands of clients, including a number of Fortune 500 clients. MSI also has relationships with third-party companies that enable us to bring the right products, the right resources, and the right kind of expertise to assist as necessary in our client engagements.

While MSI is headquartered in Omaha, Nebraska, and conducts client projects from coast to coast, its strength is derived from its local presence in cities across the Midwest and West that differentiates MSI from others in the industry. MSI locally staffs each office with architects, engineers, and other technical specialists, rather than dispatching them from headquarters. We understand the local business climate and culture because we live there.

MSI has positioned itself as a provider to those customers who seek to establish a partnership with a solid, service-oriented integrator, and not a seller of commodity-like products. These partnerships have reduced our clients' IT operations and technical support costs significantly, while at the same time yielding a wide range of technology and service improvements. MSI has also helped clients develop and take advantage of new technology deployment strategies. Our integration efforts have virtually spanned the corporate enterprise addressing such complex issues as server consolidation, security, business continuity, and storage.

**LEGAL ENTITY**

7. Vendor must state in their proposal the name, address, telephone number, facsimile number, and email address of the legal entity that would be entering into the contract. State the names, addresses, telephone numbers, facsimile numbers, and email addresses of the Contractor's principal officers. State the Contractor's type of legal entity. Contractor proposals must include basic corporate and sub-contractor information to include, but not be limited to, ownership, size, and relationship with larger owner, financial resources, date of incorporation, and staffing locations. Attach a W9 form to Proposal.

The legal entity that will be entering into the contract is MSI Systems Integrators, Inc. All principal officers can be at the following address.

MSI Systems Integrators, Inc.  
14301 First National Parkway  
Suite 400  
Omaha, NE 68154  
Phone: 402.965.2300  
Fax: 402.965.2410

Principal Officers	Email
Tom Morrison	tmorrison@msiinet.com
Jim Simpson	jsimpson@msiinet.com
Phil Savageau	psavageau@msiinet.com

MSI is a privately held organization with no parent nor subsidiary companies.

MSI is not intending to use any subcontractor in the performance of these duties.

The embedded object below is a completed W9 form.



W9.pdf

### **E-PROCUREMENT SERVICES**

8. Vendor must be prepared to provide E-Procurement Services when requested, such as on-line ordering and order / license tracking; Order History Reporting; integration with E-Procurement tools used by the State.

MSI does not currently have a full-blown E-Procurement Service which allows on-line ordering, tracking, history, and integration.

MSI is moving in that direction. MSI has taken initial steps such as an automated order email inbox and the development of a team to perform all tracking functions from the time the order has been entered until the product is delivered or installed.

MSI will work with its customers to develop further E-Procurement Services necessary to meet their needs. Such services also require integration with vendors such as IBM and can be limited, based on the information provided by IBM.

### **SUPPORT OF ENTERPRISE STANDARDS**

9. Vendor must be knowledgeable of, support and uphold Enterprise Standards set by the Information Technology Enterprise of the Department of Administrative Services.

Reference: [www.das.ite.iowa.gov/standards/](http://www.das.ite.iowa.gov/standards/)

MSI has reviewed the Enterprise Standards set by the Information Technology Enterprise of the Department Administrative Services.

### **MANDATORY CONTRACT CONDITIONS**

10. Bidder must acknowledge and agree to the following MANDATORY CONDITIONS OF CONTRACT:

MSI has responded to each below.

a) The Iowa Department of Administrative Services will be Contract Administrator of any resulting Master Agreement with the State of Iowa.

a) The IDAS will be the Contract Administrator of any resulting Master Agreement.



b) Proposed percentage discounts are considered the minimum discount offered and stated prices are to be considered maximum prices (quantity one pricing). The Contractor may offer, within written quotes, a higher discount or lower price than the approved minimum discount or maximum price for volume purchases or for competitive reasons.

b) The discount percentages, in this proposal, are the minimum discount MSI will offer. The prices stated in this proposal are the maximum prices MSI will charge. MSI may provide greater discount percentages or lower prices for volume purchases or other competitive reasons.

c) The Contractor shall provide an electronic detailed quarterly report on all sales made against this agreement within the State of Iowa to the Iowa Department of Administrative Services. The report file format shall be Microsoft Excel compatible format. The report at minimum shall include the date of sale, customer name and address, full product description, SKU Numbers, quantity, invoice number, unit and extended invoice prices. Vendor proposals must include a sample report and a description of the reporting that will be provided. The State reserves the right to requests more detailed information (ad-hoc reporting) at any time and on an individual or specific basis for a specific product, department, time frame, or for a range of products, departments or time frames.

c) MSI will provide quarterly report to IDAS which details:

Date of sale  
Customer name and address  
Full product description  
SKU numbers  
Quantity  
Invoice number  
Unit and extended invoice prices.

Below is a sample report.

Date of Sale	Customer Name and Address	Product Description	SKU Number	Qty	Unit Price	Extended Price
99/99/9999	Name Address 1 Address 2 City, ST ZIP	Description of Product	999999999	9999	\$999,999.00	\$999,999.00

MSI is available to produce reasonable ad-hoc reports concerning sales under this contract

d) Without affecting the approved discounts or prices specified in the Master Price Agreement herein, the Contractor shall provide to the Iowa Department of Administrative Services a 1.00% Administrative Fee on all sales made within the State of Iowa against this agreement. The fee is to be paid quarterly to the Iowa Department of Administrative Services.

- d) MSI will provide a 1% Administrative Fee to IDAS for all sales occurring under this contract. This will not affect the approved discount percentage prices specified in the Master Agreement.

e) THE CONTRACTOR MUST PREPARE AND SUBMIT TO IBM ALL REQUIRED REPORTS (I.E. CERTIFICATIONS, ETC.) AND PERFORM OTHER DUTIES AS REQUIRED BY IBM TO ENSURE THAT THE STATE IS COMPLIANT WITH APPLICABLE LICENSING AGREEMENTS.

- e) MSI will prepare and submit all required reports to IBM and perform other duties as required by IBM to ensure that the State is compliant with applicable licensing agreements.

### **ADDITIONAL DISCOUNTS**

11. Vendor must inform and assist state as necessary to take advantage of Special Offers, Promotions, new releases, bundles, rebates, volume purchase agreements, availability of site licenses or master upgrade programs, eligibility for additional academic discounts, etc. that are offered by either IBM or the contractor.

MSI will notify IDAS of available special offers, promotions, new releases, bundles, rebates, volume purchase agreements, and other discounts offered by MSI or IBM.

### **EFT OR CREDIT CARD**

12. Vendor must accept payment by EFT or Credit Card. Please indicate in your proposal if any additional discounts are given for electronic payments.

MSI does accept EFT or Credit Card. No discounts are given for EFT payments. Also MSI has surcharge for processing Credit Card payments.

### **HARDWARE REQUIREMENTS**

#### 3.3 Hardware Requirements

a) A "discount off list" pricing structure must be proposed with all shipping and handling costs included in price, FOB Destination. Vendor proposals must include a complete catalog and their discount off retail price list of all offered SKUs hardware, in both an electronic (MS Word or Excel compatible) and a hardcopy format. The discount, FOB destination, structure shall remain firm for the life of the contract.

MSI agrees to the above requirement, except MSI is unable to provide a catalog of all hardware with associated discounts. IBM does not have such a catalog available to its business partners.

If in the future IBM provides such a catalog, MSI will provide it to IDAS. The closest catalog MSI could provide currently is the WSCA catalog but that would not include the discounting in this proposal.

b) All equipment proposed must be IBM manufactured, must be new or reconditioned and warranted as new and of the current engineering change (EC) at the time of delivery. Delivery of reconditioned equipment must be approved in advance.

MSI agrees to the above requirement.

c) Vendors shall make no changes or substitutions of any IBM component at any time during the term of this contract without the expressed written approval of the purchasing authority. Vendors are authorized to ship alternate/third party components only when specified on the purchase order. UNAUTHORIZED SUBSTITUTION OF OEM COMPONENTS SHALL BE CONSIDERED BREACH OF THE CONTRACT.

MSI agrees to the above requirement.

d) Discount offered must be "best" price as 'best and final offers' will not be accepted.

MSI agrees to the above requirement.

e) Throughout the term of the contract the Contractor must provide an easy to use, accurate, current, web accessible catalog of products with government and educational discount, FOB destination prices. The pricelist must be kept current and be accessible via the world-wideweb 24 hours per day, 7 days per week.

As IBM does not provide such a catalog, MSI can not agree to this requirement.

If in the future IBM provides such a catalog, MSI will provide it to IDAS.

f) Vendors must also include and describe goods, services and training etc that are "over-and above" the requirements and conditions stated herein, that are provided/included without any additional cost and/or with additional cost.

MSI offers a wide range of services. Installation, configuration, assessment, content management, disaster recovery, and IT planning to cite a few these are all billable services.

Our services include networking planning, procurement and installation of IBM and Cisco products.

g) Hardware must carry at a minimum the full USA standard OEM warranty to be free of defects. Articulate, by product, the proposed product warranties that exceed the standard OEM warranty that will be provided (without additional cost).

MSI agrees to the above requirement. MSI does intend to provide warranties beyond the manufacturer's warranty.

h) Vendor must provide extended maintenance (following warranty) service options. Please list and describe each option and associated costs.

MSI would propose to provide IBM maintenance under this contract. IBM offers several maintenance packages. Based the State previous requirements, MSI believe IBM's ServiceElite maintenance best meets the State requirements. IBM's ServiceElite maintenance offers 24 by 7 coverage with four-hour response time.

MSI will offer a 12% discount off the IBM Minimum Monthly Maintenance Charge (suggested retail list price)

IBM does offer less expensive packages such as maintenance coverage of 8 by 5 with next-business-day response time (on some products), should the State desire to review these lesser coverage packages, please MSI know and it can provide pricing.

In addition, MSI can offer to manage all the State's maintenance for all IBM and non-IBM hardware under its CAM (Client Asset Management).

Our CAM services include an on-line web site that allows the review of the State's entire inventory of IT products covered by the CAM agreement.

## SOFTWARE REQUIREMENTS

### 3.4 Software Requirements

a) A "discount off list" pricing structure must be proposed with all shipping and handling costs included in price, FOB Destination. Vendor proposals must include a complete catalog and their discount off retail price list of all offered SKUs of software, in both an electronic (MS Word or Excel compatible) and a hardcopy format. The discount, FOB destination, structure shall remain firm for the life of the contract.

MSI agrees to the above requirement, except MSI is unable to provide a catalog of all software with associated discounts. IBM does not have such a catalog available to its business partners.

If in the future IBM provides such a catalog, MSI will provide it to IDAS. The closest catalog MSI could provide currently is the WSCA catalog but that would not include the discounting in this proposal.

b) The vendor must ensure that valid product licenses are received at the time, or before, receipt of the product.

MSI agrees to the above requirement.

c) The vendor must routinely provide educational materials informing Departments / Agencies of product and license abuse liability and penalties. Proposals must describe in detail how this information will be provided.

MSI agrees to the above requirement.

d) Software must carry the full USA OEM warranty to be free of defects.

MSI agrees to the above requirement.

e) If requested, vendor must provide available "evaluation" copies of software. If accepted, agency will be invoiced for the software, if not accepted the software will be returned within thirty (30) days after receipt. Vendor's proposals must include an evaluation copy catalog or list of software available for evaluation.

IBM has several pilot or evaluation programs. Software applications falling under these programs are available for evaluation. In addition, MSI stands ready to assist IDAS if it needs software for evaluation purposes which do not fall under these programs. MSI will work with IBM to obtain the software for 30 days for IDAS to evaluate. Such decisions concerning evaluation copies will be made by the State on a case by case basis by IBM.

f) Vendor must provide extended maintenance service options. Please list and describe each option and associated costs.

MSI would provide IBM's software maintenance for any software provided under the contract, at the election of the State. Should the State elect to have software maintenance it would fall under the State's PPA.

MSI will offer 12% discount off the IBM Software Maintenance for System i and System p.

Passport Advantage Software will receive a 6% discount.

In addition, MSI can offer to manage all the State's maintenance for all IBM and non-IBM software under its CAM (Client Asset Management).

g) Contractor must be able to support and manage any IBM VLAs/LPs. Describe the services you would provide.

Yes MSI can provide support and management of IBM VLA/LP. MSI will provide the following services:

- Review any existing VLAs or LPs
- Perform gap analysis between the VLAs/LPs and the State existing hardware and software products.
- Ensure all qualified equipment is included on the VLAs/LPs.
- Ensure new qualified purchase are included on the VLAs/LPs
- Perform periodic reviews to ensure compliance with the terms of the VLAs/LPs.
- As products are retired from the State's environment, ensure they are removed from the VLAs/LPs.

h) The same discount structure must be used for any VLA or LP entered into.

MSI agrees to the above requirement, the VLA or LP is entered into with MSI. Should the IDAS elect to enter into a separate VLA or LP with IBM or other business partner, MSI can not control the terms of that agreement.

## SERVICES REQUIREMENTS

### 3.5 Services Requirements

a) Vendor must offer the complete product line of IBM including related supporting operating software, maintenance, accessories and associated services only for these products and their predecessors.

MSI offers a complete product line of IBM including related supporting operating software, maintenance, accessories and associated services for these products and their predecessors.

MSI has a staff of 250 technical personnel with hundreds of IBM certifications. In addition MSI can employ IBM personnel to assist when necessary.

b) Proposals are not to include non-IBM related products or services, (general consulting, custom software development, etc).

Our proposal does not include general consulting or custom software development.

c) Services for System Integration between customer equipment and IBM product(s) are to be included.

Using MSI's and when necessary IBM's technical staff, we are ready to deliver system integration services between customer equipment and IBM products. These services are billable services and are not included in the pricing in this proposal.

d) Describe the availability, arrangements, and processes that are in place that are provided, without additional cost, to ensure that customers have immediate access to IBM's technical support staffs.

The only services available at no additional cost are those provided through IBM's warranty and maintenance.

e) Describe additional technical support services that are offered and available for an additional cost.

MSI and IBM offer a vast variety of technical services available for additional fees. This includes general IT consulting to custom application development.

f) Vendor must provide, without any additional costs to the State, sales assistance and the services of a Technical Support Center. Vendors must describe how the account will be serviced and what

sales assistance and the level of technical support that will be provided without any additions costs. Include a description and "fee" schedule for technical support services.

MSI's Technical Support Center is referred to as our Customer Services Organization (CSO). The CSO performs many tasks to assist our customers. These include:

- Sizing of the hardware products to meet the customer needs
- Ensuring the order received from the customer constitutes a complete order in IBM's order processing system.
- Verify deliver dates and locations
- Notify the customer of any special discount available
- Processing the order
- Tracking the order from entry to shipment or installation.

Typically MSI provides these services at no additional charge. Additional fees would apply in highly complex and detail sizing and configuration excises.

g) Vendor must provide excerpts from your marketing plan that demonstrates how you would identify the current and future IBM hardware and software needs of Iowa state agencies, cities, counties and public schools and how you would satisfy those needs.

Rather than our marketing plan, this type of information would fall under our account management. Our client executive, Denny Gass, would regularly meet with member of IDAS to review new and anticipated products and enhanced version of current products.

MSI would recommend that IDAS invite other appropriate to these stakeholders briefing from other agencies, cities, counties and schools that may be interested in the topics.

MSI will make the topics of presentation available sufficiently in advance to allow the interested parties to join the presentation in person or via a web conference.

MSI will bring IBM specialists and MSI employees in, to discuss the features and benefits of the products so that the interested parties can determine the usefulness of these products. MSI will structure the presentation to allow for an extensive question and answer period to provide detailed information to the interested parties.

MSI will provide the presentation material available via a web site for an extended period after the presentation for further review.



h) Vendor must provide extended maintenance service options. Vendor must list and describe each option and associated costs.

See answers in Hardware Requirement and Software Requirements.

i) Describe on-site services that will be provided. Include promise response times to help calls by geographical coverage within the State of Iowa.

See answers in Hardware Requirement and Software Requirements.  
The entire State of Iowa will be covered.

## LEASING REQUIREMENTS

### 3.6 Leasing Requirements

a) Vendor must offer an option for leasing (renting) equipment.

MSI can provide leasing to IDAS under this contract. Leasing rate will depend upon the customer requesting the lease.

b) See proposed Master Lease Agreement (RFP Attachment 13)

MSI has reviewed the Master Lease Agreement in the RFP and believes it is substantially in line with IBM Master Lease Agreement in place with the State today. MSI would propose that the IBM Master Lease Agreement in place today, be the basis for future leases. Should the State need modifications to that agreement MSI will work with IBM and the State to develop an agreement that is acceptable to all parties.

c) Describe your leasing program in your proposal

MSI can provide FMV lease with various terms depending on the customer's requirements.

d) End of lease options shall not include or permit a special (bargain) purchase price or a purchase price that is less than the fair-market-value (FMV) of the equipment.

MSI will not provide Dollar-Buyout leasing terms or other terms in which the purchase is less than the FMV of the equipment.

e) Vendors shall not offer leases commonly known as lease-to-own, lease/purchase, conditional sales, or any other similar lease agreement.

MSI will not provide lease-to-own/purchase or conditional sales or other similar lease agreements.

### 3.7 Proposal Requirements

#### A. Proposal Summary

Contractor proposals must include a brief (no more than ten pages) Process Model which explains how their proposed solution for providing the products and services best supports the requirements of this Request For Proposal.

MSI is proposing the same process model it uses today to fulfill the State's requests for hardware, software, and services.

This model would change significantly as MSI works towards installing E-Procurement Services.

The process would also be affected greatly should IBM provide an on-line catalog of its hardware and software products.

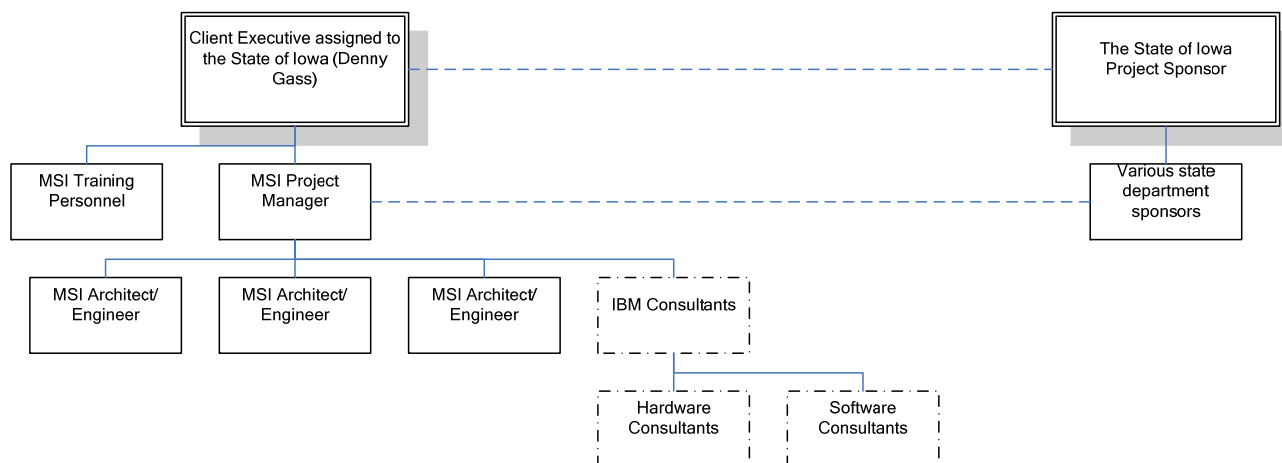
#### B. Work Plan

A work plan must be included in the proposal and at a minimum shall describe how the contract will be managed, prioritized and controlled. This must include a management structure (with organizational chart) and the method of status reporting (include an example of a Management/Status Report). The work plan shall describe order procedure, including escalation and measures, for resolving problems and complaints. The work plan shall describe the process to notify and distribute upgrades, patches, etc. to agencies covered by a support agreement.

Typically for these types of contracts, MSI views them from two perspectives.

- Overall ongoing contract. This includes ensuring the customer satisfaction, identifying customer needs and objectives, identifying skills desired by the customer and gaps in our skill set.
- Individual projects. As MSI is engaged into each project, MSI will apply contract management to each project. This contract management is focused on the more traditional aspects of contract management where we:
  - Ensure there is consistent agreement on requirements, objectives, costs, and deliverables of the project.
  - Communicate any potential obstacles that may be encountered during the project.
  - Regularly communicate the status of the project.
  - Ensure timely completion of the project.

The below drawing is depicts a typical organizational chart for such a contracts. This depicts individual projects with actual personnel changing from project to project depending upon the skills required.



### Problem Resolution

Our problem resolution process typically includes the following but could be tailored to meet the State's unique requirements.

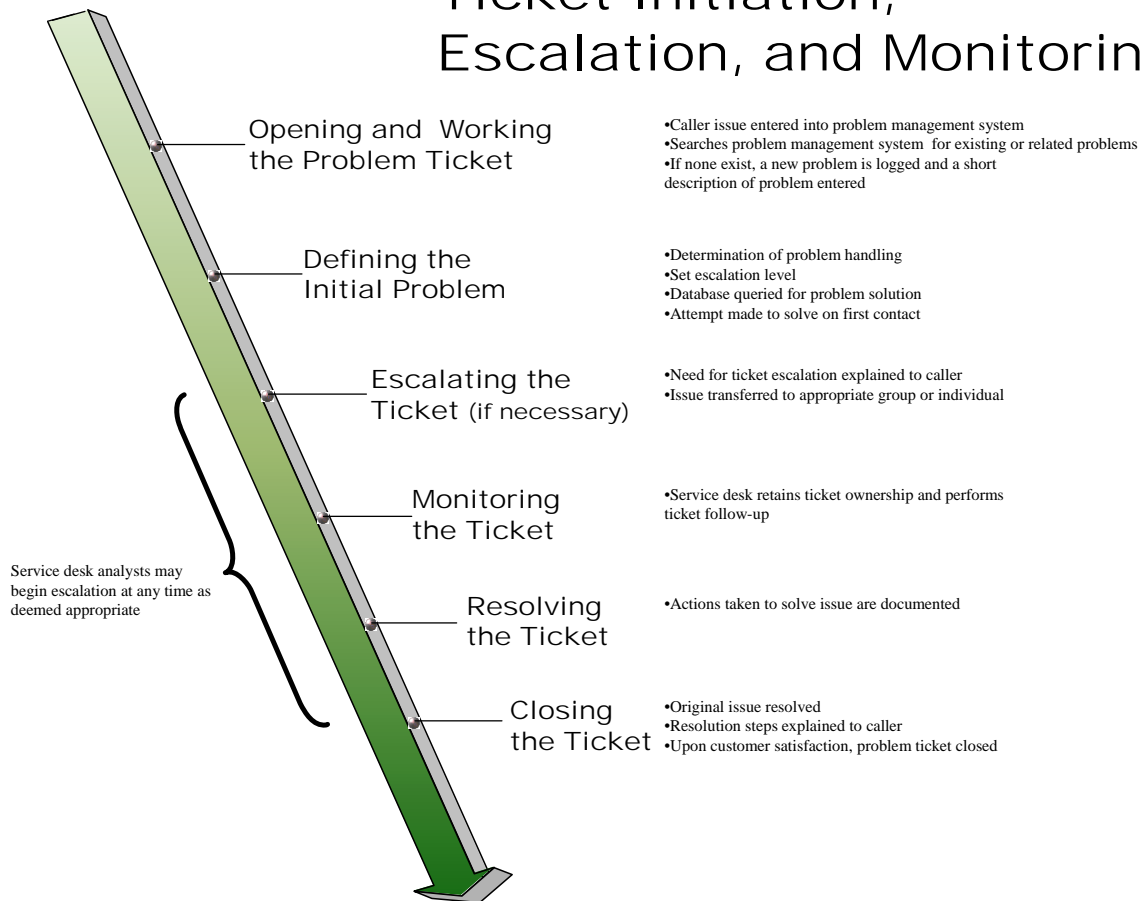
- **Problem reporting.** Our problem reporting consists of either the customer or MSI personnel identifying the problem. The problem is entered into a problem reporting system. The problem is assigned a priority based on criticality of the problem and impact to the customer. The customer has final approval of the priority of any problem.

The problem is tracked throughout the process, thus that no problem goes unresolved. Also no problem is closed until the customer is satisfied with the resolution.

- **Problem escalation.** The customer and MSI will define escalation procedures for any problem based on the problem priorities agreed to by MSI and the customer. In addition to the escalation based on the problem priority, the State should feel free to escalate problem beyond their priority if it is unsatisfied with the results.
- **Problem resolution.** MSI will close each problem after it has been resolved to the customer's satisfaction. We also will deliver, during a Tier 2 engagement, monthly problem reports to the State.

The diagram below presents an overview of our problem management process.

## Ticket Initiation, Escalation, and Monitoring



### Communications

Our communications are typically very frequent, usually either weekly or monthly depending on the activity in the account. This would include both formal and informal types of communications.

For formal communications, we typically hold periodic status meetings. At these status meetings we discuss:

- Open issues
- Orders completed
- Orders to be delivered
- Changes to the schedule of any orders

The meetings are usually chaired by the client executive and the client executive publishes minutes from the meetings. The status meetings are either in person or via a conference call.

MSI seeks to return all phones or email (received outside of the problem management) within one business day. Usually such communications are answered within an hour.

### Change Management

Should scope of any services need to be changed, the following is our change management procedure:

- A change is defined as an alteration to the project scope, deliverables, or milestones that affects the project cost, schedule, quality, or conformance of the deliverables to the agreed specifications.
- MSI has overall responsibility for the Change Management process.
- Once a change is identified, both parties will work together to articulate and define it in a written format.
- MSI will then prepare a Change Order document that amends the statement of work and must be signed by both parties.

Invoice Procedures

MSI will follow the invoice procedures outlined in the RFP and agreed to in the contract between the State and MSI.

Monthly Reporting

The monthly reporting will consist of the monthly report outlined in the RFP.

Contract Office

The office that would manage the contract is at:

2600 Westown

Suite 210

West Des Moines, IA 515.246.4100

This is MSI's regional office for the State of Iowa. We believe the office's local presence will allow the Client Executive to be on-site as needed throughout the term of the contract.

Contract Manager

MSI is proposing Mr. Denny Gass as our Contract Manager. In Appendix A appears Mr. Gass' biography. Mr. Gass is an experienced contract manager with over 25 years experience in the IT industry. In addition, Mr. Gass has served as the contract administrator for the current contract between MSI and the State. As such he has in-depth knowledge of the State's technical requirements as well as its operational processes.

C. Product Catalog and Pricing:

1. A "discount off list" pricing structure must be proposed with all shipping and handling costs included in price, FOB Destination. Vendor proposals must include a complete catalog and their discount off retail price list of all offered SKUs of hardware, and software, in both an electronic (Compatible with MS Word or Excel) and a hardcopy format. The minimum discount structure shall remain firm for the life of the contract.

MSI agrees to the above requirement, except MSI is unable to provide a catalog of all hardware and software with associated discounts. IBM does not have such a catalog available to its business partners.

If in the future IBM provides such a catalog, MSI will provide it to IDAS. The closest catalog MSI could provide currently is the WSCA catalog but that would not include the discounting in this proposal.

2. Both hardware and software catalogs, showing discounted prices and discounts, shall be updated at least annually or as new products are offered.

As IBM does not provide such a catalog, MSI can not agree to this requirement.

3. Discount submitted must be "best" price as best and final offers will not be accepted.

MSI agrees to the above requirement.

4. Throughout the term of the contract the Contractor must provide an easy to use, accurate, current, web accessible catalog of products and services with government and educational discount, FOB destination prices. The pricelist must be kept current and be accessible via the world-wide-web 24 hours per day, 7 days per week.

As IBM does not provide such a catalog, MSI can not agree to this requirement.

5. Vendors must also include and describe goods, services and training etc that are "over-and-above" the requirements and conditions stated herein, that are provided/included without any additional cost and/or with additional cost.

MSI agrees to the above requirement.

D. Point by Point Response to RFP Section 3, as instructed in Section 4.

MSI has complied with the above requirement.

## SECTION 4

**MSI EXPERIENCE AND QUALIFICATIONS****FINANCIAL STABILITY****4.2.7 Company Experience & Qualifications**

**4.2.7.1** Experience and financial stability is important. Provide details of your business background, number of clients, total business revenues, number of years in business, and other information as necessary to provide assurance of your financial stability.

MSI is not a subsidiary of any company nor does it have subsidiaries. MSI is a privately-held company, in which its management team and key technical staff have a meaningful ownership stake in the company.

Since MSI began offering its services to the commercial marketplace in 1994, revenue and client growth has been substantial. This growth has been on a steady upward trend over the last several years as revealed below in our annual revenue figures.

2003 Fiscal Year:	\$144.5 million
2004 Fiscal Year:	\$164.5 million
2005 Fiscal Year:	\$209 million
2006 Fiscal Year:	\$232 million
2007 Fiscal Year:	\$340 million

MSI has over 2,000 customers.

The embedded file is our most audit financial statement.



MSI 2007 Audited  
Financials.pdf

**4.2.7.2** Document the number of years experience with providing the types of services sought by the RFP.

MSI has provided these services for over 10 years.



**4.2.7.3 Describe the level of technical experience in providing the types of services sought by the RFP.**

MSI is an expert at the fulfillment of IBM products and services.

**4.2.7.4 List all services similar to those sought by this RFP that the bidder has provided to other businesses or governmental entities.**

MSI has several master contracts with business and governmental entities for MSI services and IBM products and related services.

MSI has 1000s of project-oriented fulfillment customers for IBM products and related services.

These project-oriented fulfillments would be representative of the type of fulfillment that would occur under this contract as MSI understands it. For example a department wishes to purchase some storage, the department would look up the storage in the catalog. Then discuss the purchase with MSI, and MSI may suggest alternatives IBM products or additional IBM products or fewer IBM products. Once the department and MSI have agreed to the correct products to meet the customer's requirements MSI will fulfill the order with the discounts agreed to in the master agreement.

**4.2.7.5 Identify if the services were timely provided and within budget.**

These services have been delivered in a timely fashion within the budget agreed to by MSI and customer.

**4.2.7.6 Provide letters of reference from three (3) previous clients knowledgeable of the bidder's performance in providing services similar to the services described in this RFP. Include full contract information including name, title, telephone and fax numbers plus email addresses for each reference.**

See response to References in Section 3 Service Requirements

SECTION 5

## **PERSONNEL**

### **4.2.8 Personnel**

The bidder shall provide the following information regarding its personnel.

MSI has responded to each item below.

**4.2.8.1** Provide a table of organization. Illustrate the lines of authority. Include the names and credentials of the owners and executives of your organization and, if applicable, their roles on this project. Also include key personnel who will be involved in providing services contemplated by this RFP.

An executive level organization chart and biographies of key individuals appear in Appendix A of this proposal.

**4.2.8.2** Provide resumes for all key personnel, including the project manager, who will be involved in providing the services contemplated by this RFP. The resumes must include: name, education, and years of experience and employment history, particularly as it relates to the scope of services specified herein. It is expected that the key personnel presented in the vendor response to the RFP will be the team members involved in providing the services for transition to the new software system. Should changes be required THE STATE must approve the replacements.

An executive level organization chart and biographies of key individuals appear in Appendix A of this proposal. MSI agrees to allow the State to approve the replacements of individual assigned the account.

**4.2.8.3** Years of experience and employment history particularly as it relates to the scope of services specified here

An executive level organization chart and biographies of key individuals appear in Appendix A of this proposal.

**4.2.8.4** Provide the name and qualifications of any subcontractor who will be Involved with this project. Describe the work and estimate the percent of total work the subcontractor will be performing.

No subcontractor is anticipated to be used in the delivery of services under this contract.

**4.2.8.5** Describe other contracts and projects currently undertaken by the bidder.

MSI has hundreds of contacts be worked at this time, so many the descriptions of each would make our proposal unnecessarily long and not provide significant benefit to IDAS.

SECTION 6

## ***FINANCIAL INFORMATION***

### **4.2.9 Financial Information**

The bidder must provide the following financial information to demonstrate the bidder's long term viability to carry out the requirements of any contract with the State:

**4.2.9.1** Submit audited financial statements (annual reports) for the last three (3) years and/or bank statements, credit reports etc

The embedded file is our most audit financial statement.



MSI 2007 Audited  
Financials.pdf

**4.2.9.2** Provide a minimum of three (3) financial references.

See response to References in Section 3 Service Requirements

SECTION 7

## **TERMINATION, LITIGATION, AND INVESTIGATION**

### **4.2.10 Termination, Litigation, and Investigation**

The bidder must provide the following information:

**4.2.10.1** During the last five (5) years, has the bidder had a contract for services terminated for any reason? If so, provide full details related to the termination.

MSI has had no termination of a service contract in the preceding five years.

**4.2.10.2** During the last five (5) years, describe any damages or penalties or anything of value traded or given up by the bidder under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP and the resulting Contract. If so, indicate the reason and the estimated cost of that incident to the bidder.

No damages or penalties have been assessed against MSI under existing or previous contracts during the last five years.

**4.2.10.3** During the last five (5) years, list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could affect the ability of the bidder to perform the required services. The bidder must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the bid proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a bid proposal, and with respect to the successful bidder after the execution of a contract, must be disclosed in a timely manner in a written statement to the Department.

No felony conviction of owners, officers, or primary partners. No pending litigation administrative or regulatory proceedings. No previous litigation, administrative, or regulatory proceedings that materially affect MSI ability to perform the required services

**4.2.10.4** During the last five (5) years, have any irregularities been discovered in any of the accounts maintained by the bidder on behalf of others? If so, describe the circumstances of irregularities or variances and disposition of resolving the irregularities or variances.

No accounting irregularities have been discovered in any accounts maintained by the MSI on behalf of other during the last five years.

SECTION 8

## **ACCEPTANCE OF TERMS AND CONDITIONS**

### **4.2.11 Acceptance of Terms and Conditions**

The bidder shall specifically stipulate that the bid proposal is predicated upon the acceptance of all terms and conditions stated in the RFP. If the bidder objects to any term or condition, specific reference to the RFP page, and section number must be made. Objections or responses that materially alter the RFP shall be deemed nonresponsive and disqualify the bidder. Reference Section 6.

1) In Section 6 of RFP, Subsection 6.5 Payment Terms and Conditions page 25, states "Title and risk shall not transfer until after delivery, testing, fully operational in a production mode, and the States acceptance." This would seem to imply an unlimited evaluation period for the State.

MSI believes a reasonable accommodation can be made to protect the State against defective or inoperable products, and provide MSI protection against unnecessary delays in installing, testing, and acceptance or rejecting the products.

2) Section 6 of RFP, Subsection 6.6 No Limitation of Vendor Liability page 26 places great responsible on MSI, although MSI is neither the holder of the warranty (IBM is) nor the provider of the maintenance (IBM is). MSI seeks to have liability section be modified to reflect this situation. Therefore MSI proposing the warranties and maintenance limit MSI responsibility for the damages.

### **4.2.12 Certifications**

The bidder shall sign and submit with the Technical Proposal the document included as Attachments 1 through 8.

See Appendix B.

### **4.2.13 Firm Bid Proposal Terms**

The bidder shall guarantee in writing the availability of the services offered and that all bid proposal terms, including price, will remain firm a minimum of 180 days following the deadline for submitting proposals.

MSI agrees that the availability of the services offered and all bid proposal terms, including price, will remain firm a minimum of 180 days following the deadline for submitting proposals..

SECTION 9

## ***COST PROPOSAL***

### **4.3 Cost Proposal**

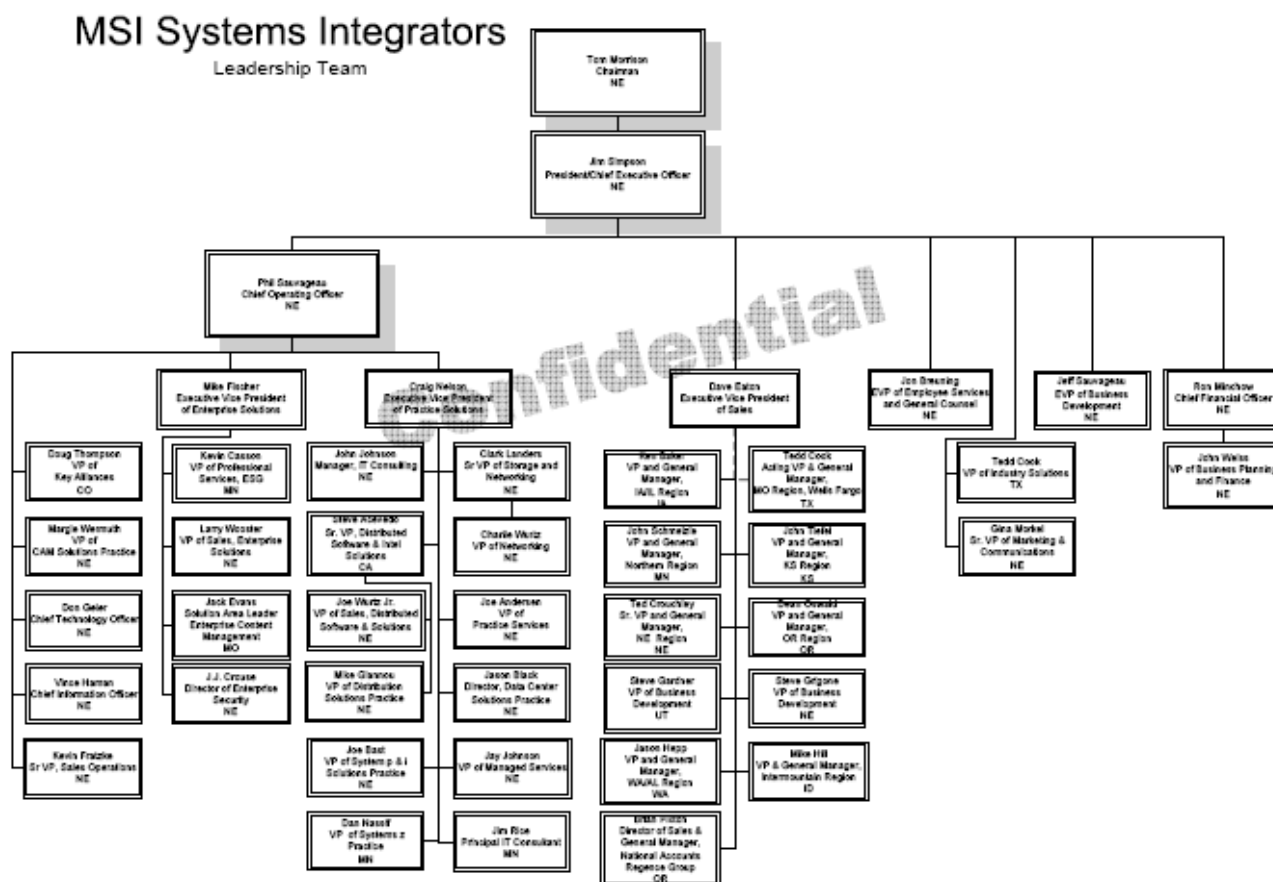
The bidder shall provide the Cost Proposal in format as shown in Attachment 10.

MSI has completed the cost proposal as directed.



## SECTION 10

# APPENDIX A – ORGANIZATION CHART AND BIOGRAPHIES



MSI has a significant local presence in Des Moines, Iowa. MSI will draw on this staff to assist IDAS thorough the term of the contact.

**Jerry Quick**

Storage Solutions Sales Specialist  
MSI Systems Integrators, Des Moines, IA

Jerry Quick has focused on storage IT hardware and software solutions since July 2006 for MSI. His responsibilities include helping customers identify storage solutions that best meet their business requirements, maintaining high customer satisfaction levels, and growing sales territory revenue and services.

Mr. Quick was previously employed by IBM Corporation initially as a senior client representative and most recently as a storage sales specialist. He was responsible for the complete account coverage of a large Fortune 100 national account and was part of the national account team. Mr. Quick also worked for The Principal Financial Group as a senior systems analyst for six years focusing on strategic company projects where information technology provided benefits to clients.

He has a bachelor's degree from Central College in Pella, Iowa.

**Certifications:**

- IBM Certified Specialist - Enterprise Disk Solutions
- IBM Certified Specialist - IBM Storage Sales
- IBM Storage Sales, v5

***Greg Norton***

Storage Solutions Engineer

MSI Systems Integrators, Des Moines, Iowa

As a storage engineer at MSI, Greg Norton is involved with pre-sales technical support, as well as implementation and post-sales technical support of storage hardware and software products. His primary responsibilities include integrating storage hardware and software components, covering the entire product lines from companies, such as IBM, Brocade, and Cisco. Mr. Norton designs solutions to meet MSI's customers' requirements for storage consolidation, virtualization, business continuity, and disaster recovery. He manages relationships between customers and MSI's primary vendors, as well, to help provide seamless communication and support on products and services MSI offers to its customers.

Mr. Norton has been involved in many complex projects. He started with MSI in 1998 as an RS/6000 integration engineer and has a strong open systems background. Mr. Norton has installed and supports a large number of complex storage area networks, as well as RS/6000 and SP systems for MSI clients in the Midwest. One of his most recent projects was a large storage virtualization and SAN project for a home appliances corporation. The project involved IBM DS4000 and ESS storage, as well as Brocade Director and edge switches. The storage was virtualized using IBM's SAN Volume Controller product to allow heterogeneous host systems to utilize multiple storage subsystems.

Mr. Norton got his first taste of the midrange arena in 1991 as a programmer with Pella Corp., working in Progress RDBMS and supporting a 125-node network. He then moved to Eaton Corp., a heavy-duty truck equipment manufacturer, as a systems analyst with a Microsoft Windows NT network of 250 nodes. He also supported several Digital VAX VMS clusters and a switched Ethernet network and handled a conversion that permitted Banyan Vines and Intelligent Messaging to run on Windows NT. Mr. Norton has experience as a certified AutoCad (R 12) instructor and has completed courses in AIX Administration, Windows NT System Administration and Performance/Troubleshooting, SAN Foundations, and DS4000 Implementation.

**Cross-Brand Experience:**

- Implemented SANs with multi-vendor fibre-channel hardware from Cisco and Brocade.
- Implemented fiber-attached storage subsystems with attachment to host systems by IBM, Compaq, HP, and SUN.
- Implemented SANs with multi-vendor storage subsystems by IBM, STK, and Hitachi.
- Implemented host systems with fiber attachment to IBM, Hitachi, EMC, and STK disk subsystems.

**Mentoring Capabilities:**

- Spent three months on-site at KVI Seabury and Smith in Des Moines as an on-site consultant during a Data Warehouse Implementation on IBM RS/6000 SP hardware and storage. The

project involved multiple host systems and several customer sites in the U.S. using remote access.

- Taught evening classes in Autocad at Iowa Western Community College.
- Developed and implemented a plan for relocating 22 servers and mass storage from the Des Moines, Iowa, data-center of Equitable of Iowa Insurance onto different hardware in a data-center in Minneapolis, Minnesota. Spent approximately two and a half months on-site working with customer staff to develop, test, and implement the hardware migration and conversion.

#### **Vendor Interaction and Vendor Management:**

- Implemented and configured storage hardware in multiple sites as part of a business continuance solution for Iowa Health Systems, consisting of IBM disk storage and IBM-branded Cisco directors and utilizing fibre-channel over IP for distance replication of critical data between the DCs.
- Installed and configured hundreds of TBs of IBM DS4000 and DS8000 storage for Intermountain Healthcare, a large healthcare provider based in Salt Lake City. Most of the storage virtualized using multiple SAN Volume Controller clusters. Components are part of a complex SAN comprised of IBM-branded Brocade directors and switches. Solution allows IHC to migrate data from one pool of storage to another without disrupting normal operations. Also allows IHC to implement a tiered storage approach so that it can match business and application requirements with storage that is most suitable for each individual situation.
- Implemented a large SAN and tiered storage infrastructure for ACT in Iowa City, Iowa; solution consisted of a tiered storage approach utilizing multiple DS4000 and DS8000 storage arrays and the SAN Volume Controller virtualization product from IBM. Components connected using IBM-branded Brocade directors for HA and redundancy. Second DC with similar equipment is being implemented as part of a business continuity solution.
- Managed a large storage virtualization project with IBM and the implementation of its SAN Volume Controller product. Other vendors involved in the project included Brocade, IBM, and HP/Compaq. There were many compatibility concerns and issues that needed to be resolved in order for the final solution to function and be supported by the various vendors prior to the actual implementation.
- Project manager on a large storage and SAN project for the State of Iowa Information Technologies Department. Managed the relationship between the hardware vendors, including IBM and Brocade, and the State's Support Personnel. Recently managed a data migration project where several terabytes of data were migrated from one SAN storage subsystem to a new one, using Softek TDMF software for the migration.
- Responsible for generating pre-sales configurations and documentation for customers and prospective customers on a daily basis. Typical configurations require interaction with the technical engineers and product development teams from vendors including IBM, Brocade, Cisco, and others.

**Certifications:**

- IBM RS/6000 Solution Sales
- IBM AIX Administration
- IBM AIX System Support
- IBM RS/6000 SP and PSSP
- IBM AIX Installation and System Recovery
- Citrix Metaframe Administration
- IBM PC Server Specialist
- BMC Software Perform/Predict Certification
- Brocade Storage Network Implementer
- IBM DS4000 Technical Training
- Cisco MDS-9000 Implementation and Troubleshooting
- IBM Open Systems Storage Certification
- IBM DS4000 Storage Technical Certification
- AutoCad (R 12) instructor

**Technical Skills:**

- Assisted in development of IBM DS4000 technical certification exam
- IBM high-end Open Systems disk
- IBM SAN Volume Controller
- DS8000
- IBM DS4000 and ESS storage
- SAN design and implementation
- Tiered storage, arrays
- Cisco storage
- Brocade switches
- STK storage
- Hitachi storage

**Brian Keller**

Storage Solutions Engineer

MSI Systems Integrators, Des Moines, Iowa

As a Storage Solutions Engineer, Brian Keller is responsible for helping to design, plan, and implement comprehensive solutions with a focus on the management of Tivoli Storage Manager infrastructures. In addition to his extensive experience with Tivoli Storage Manager implementations, he has also earned his Tivoli Storage Manager v5.3 Certification. It is with this combination of experience and education that Mr. Keller can share his proven outstanding skills with MSI customers.

Mr. Keller came to MSI from Maytag Corporation. He held various positions at Maytag for over 20 years. His last role was as a Business Consultant, and he was responsible for Unix and storage systems administration, Tivoli Storage Manager operations, and overall storage area network (SAN) management. Mr. Keller's experiences allow him to see a complete view of the IT environment and understand the interaction of all components of an IT infrastructure. Additional previous positions he held at Maytag include stints as manager for both business continuity planning, and mainframe technical services, where his responsibilities included developing recovery and business continuity solutions as well as budgetary needs.

**Ryan Miller**

Storage Solutions Engineer

MSI Systems Integrators, West Des Moines, Iowa

Ryan Miller is a storage solutions engineer at MSI and has 10 years of experience in the IT industry. His responsibilities in this role include installing, configuring, maintaining, and troubleshooting storage devices related to IT with a focus on the management of Tivoli Storage Manager infrastructures.

Mr. Miller was previously employed by the Principal Financial Group as an IT system associate and TSM administrator. His TSM environment at Principal included an infrastructure that backs up thousands of clients at a rate of 9 to 10 TB nightly, with nearly 2 Petabytes of data residing on tape. Mr. Miller also administered 30 TSM servers running on the zSeries/operating system and AIX. He worked with the SAN and on Windows servers at Principal, as well.

**Certifications**

- IBM Tivoli Certified Consultant, TSM v4.1
- SHARE Project manager

**Dennis Pavelka**

Systems z Engineer (VM and VSE)

MSI Systems Integrators, Des Moines, IA

Dennis Pavelka joined MSI in 1997 after nearly 30 years of work with IBM mainframes. He is a recognized expert in VM and VSE and has pioneered support for the Linux environment on the mainframe for MSI clients. In 2006, Mr. Pavelka was involved with multiple installations of IBM's latest mainframe, z/9. He also helped several customers with migrations to the latest versions of z/VSE and z/VM.

Mr. Pavelka came from CT Farm and Country, where he was an operations manager responsible for running a computer room that tracked goods and gathered data each day from over 200 retail stores. Previously, he spent 23 years with IBM, primarily as a system engineer working exclusively on VM and VSE.

Mr. Pavelka has completed IBM's Top Gun Base and Tools Classes, attended the IBM-sponsored System z Expo and VM/VSE Technical Conference in 2007, and is certified for Linux Enablement on zSeries and S/390.



**Mike Holmes**

IT Consultant

MSI Systems Integrators, Des Moines, IA

Mike Holmes joined MSI's Des Moines office in 2005 as a solutions architect with 27 years of experience in the information technology industry. Mr. Holmes is now an IT consultant, assisting MSI's sales specialists and engineers with solutions to best fit customers' needs.

With a blend of technical and senior level management experience, Mr. Holmes will align CIO needs with the solution capabilities of MSI. He develops and coordinates the delivery of client solutions in the area of Business Continuity/Disaster Recovery and support activities in infrastructure simplification. Some of his career project experiences include call center system development, data center design/relocation, internet portal development, image/workflow implementation, IT strategy development, and extensive post merger business integration consulting.

Mr. Holmes joined MSI from AmerUs Group in Des Moines, where he served as corporate CIO. He oversaw all aspects of IT delivery for life insurance, annuity, and capital management lines of business. Prior to that, he served as CIO at ALLIED Group, a property and casualty insurance subsidiary of Nationwide, located in Des Moines. He also held positions as data center manager, director of voice/data communications, and systems programmer.

Mr. Holmes holds a bachelor's degree in business administration degree in information management and a master's degree in business administration from Drake University. He presented at SHARE 2007, "Building Better Resiliency Through Data Replication."

Some of his major project experiences include:

- **Sarbanes-Oxley Compliance:** Led an 18-month IT process to achieve 404-B compliance for a Life Insurance and Annuity company. This included the development of formalized processes and documentation for all IT functions and considerable interaction with E&Y and KPMG to define the parameters of this new regulation.
- **IT Exposure Management:** Implemented policies and procedures to address Privacy Regulations and electronic use of company systems/information. Developed method to respond to litigation-driven searches of e-mail and electronic documentation.
- **IT Strategy Development:** Developed a corporate-wide IT strategy, which was validated by the Gartner Group and approved by Senior Management and the Board of Directors. Key components included infrastructure standards, common processes, system consolidations, and governance practices.
- **Data Center Relocation:** Performed all phases of site selection, building renovation, and migration planning necessary to move the corporate data center from the city to a suburb.
- The move allowed the company to better use the valuable office space at headquarters for employees while also benefiting from a hardened processing environment for mission critical processing functions.

- **Enterprise Application Integration:**
  - **Internet Agent Center:** Managed the design, development, and deployment of an internet portal, which allowed the agency sales force, in 375 locations, to submit insurance applications electronically and fully underwritten.
  - **Claims Image/Workflow System:** Performed the technology selection and managed development and implementation of an image and workflow system to process all claims for a property and casualty company. The budget for the project was \$10 million and was completed in 18 months. Features included automated internal inbound mail processing and scanning and system support for 24x7 “first call” claims processing. Computer and telephony integration was leveraged to capture customer conversations, store as part of the electronic claims folder, and play back to adjustors later in the business process.
  - **Financial System Consolidation:** Delivered all IT services necessary to support consolidation of financial systems and processes for four life insurance/annuity entities. The project included installation of a client/server version of J.D. Edwards General Ledger, a financial reporting data mart, and storage area network technology to provide high availability and performance.
  - **Commission System Consolidation:** Performed system selection and managed customization and migration to a common commission system to support three life insurance entities. Requirements include the need to support five distinct distribution channel structures and flexible payment hierarchy schemes. The budget for the project was \$6 million, while business benefits were significant cost reductions associated with administering and supporting multiple commission systems. The web-based solution provided self-serve functionality to the agency sales force.
- **Business/IT Integration:** Served as an internal consultant to develop a post merger integration plan which consolidated IT staffing and data centers, resulting in over \$12 million reduction in annual expenses. IT metrics were developed to relate capacity and growth trends of IT with business-driven benchmarks. The process included IT organizational design changes, business process redesign, and leadership/staffing restructure.
- **Call Center System Development:** Led the design and development of call center software, which leveraged computer/telephony integration for outbound telemarketing. The system supported direct marketing sales for over 120 seats, serving as the sole revenue source for the business unit.

**Certifications:**

- IBM Certified Infrastructure Systems Architect
- IBM Certified for On Demand Business Solution Designer
- IBM Certified Specialist, High-End Disk Solutions
- IBM Certified Specialist, zSeries
- TOGAF 8 Certified
- ITIL Foundation

**Lee Lovig**

Enterprise Content Management Architect  
MSI Systems Integrators, Des Moines, Iowa

Lee Lovig joined MSI in April 2005 and works with the Enterprise Software & Services team as an Enterprise Content Management Architect. With over 20 years of experience in systems and application programming, as well as six years of management, Mr. Lovig has held positions such as Application Architect, Enterprise Architect, Senior Business Analyst, Technical Lead, and Senior Systems Analyst. In addition to his years of technical experience, Mr. Lovig has demonstrated leadership in forming and leading several professional groups.

**Recent Project Experience Includes:**

- Guided the development of multi-tiered Java and main frame applications using WebSphere and CICS Web Services. Designed and implemented solutions using WebSphere on VM Linux, CICS TS 2.3. Coached existing COBOL CICS analysts and developers on new platforms and technologies using Service Oriented Architectures.
- Provided enterprise wide leadership on Information Technologies, Architectures, and Policies. Worked with Senior Management, Business Directors, and Technical Leaders in implementing a consistent and effective set of applications, tools, and processes. Designed, documented, and implemented Java Interface Classes for WebSphere for Servlet and JSP access to DB2, SQL Server, CICS, MQ Series, Lotus Notes, RACF, and LDAP. In-house developed CORBA based applications. Managed consolidation of disparate e-mail systems (Exchange, Notes 4.6, Notes 5) to Notes 6.5. Established change control environment for the Operations Department.
- Created and managed cross-functional teams from Technical Support, Application Development, Line of Business, and experts to rapidly select, design, and implement solutions to business challenges. Guided team members on requirements gathering, use case documentation, data modeling and definitions, test planning, and implementation planning.
- Provided lead support on Unisys Mainframe to Windows NT/SQL Server conversion for the Policy Administration Systems. Managed the technical architecture design process including requirements gathering, data modeling, OO analysis, and design. Also managed the Computer Operations and Telecom departments.

**Skills:**

<i>Hardware and Operating Systems</i>	zseries: zOS and VM, i Series, Intel (Windows, Linux, OS/2), Sparc/Solaris, HP/HP-UX
<i>Languages</i>	BAL, COBOL, C, C++, Perl, JAVA, Unix scripting, HTML, XML

<i>Application Software</i>	Lotus Notes, MS Exchange, WebSphere, tomcat/jakarta
<i>Databases</i>	DB2, Oracle, Informix, SQL Server, MySql

***Oz Osmundson***

Data Center Architect

MSI Systems Integrators, Eastern Iowa

Oz Osmundson is a seasoned Data Center Architect with more than 40 years of experience in the IT industry. With his considerable amount of experience, he offers MSI customers solutions that can meet all of their data center needs. He assists MSI customers in analyzing their data center requirements, researching and creating plans, floor layouts, environmental monitoring, and relocations.

Prior to joining MSI in 2005, Mr. Osmundson was with IBM for 36 years in several positions. His most recent role was a Physical Planning Representative. Some of his responsibilities included:

- Planning for the installation of IBM equipment
- Safety and code compliance reviews
- Mainframe data center installations
- Data center relocations
- Environmental and power issue planning
- Configuration and management of UPS
- Existing data center analysis
- Creation and updates of data center layouts using AutoCad
- Site surveys and verifications

Mr. Osmundson received extensive technical training from the U.S. Air Force. He attended military electronic schools and classes. He additionally received a wide range of training and onsite skill development during his extensive term of employment at IBM.

**Technical Skills:**

- Electronic technical management
- Electrical distribution systems
- Data center NEC code knowledge
- Data center layout and design
- Aperture CAD program
- Data Center Manager module

**Jeff Shugart**

Account Executive

MSI Systems Integrators, Des Moines, Iowa

During his 19 years with IBM, Jeff Shugart was a product representative, an account executive, and for five years, an AS/400 product specialist. Midrange systems, with an emphasis on the AS/400, remain his area of primary focus with MSI. He considers himself a generalist since he has assisted clients across a wide spectrum from manufacturing and construction to medical, insurance/financial, legal, school districts, and state and local government.

Mr. Shugart holds a Bachelor's degree in Business from Iowa State University.

**Steve Wilkie**

Solution Engineer

MSI Systems Integrators, Des Moines, Iowa

Steve Wilkie joined MSI's Des Moines office in October 2000 with over 13 years of output management experience. He provides MSI with a broad technical knowledge that includes the following systems: production printing iSeries, MVS/VSE, VAX, DEC/Alpha, Windows, and AIX. Mr. Wilkie is recognized for establishing strong client rapport and delivering all projects within the expected timeframe.

With his wide range of skills and expertise, Mr. Wilkie provides a valuable contribution to MSI and the clients it serves. His recent projects include the conversion of Xerox DJDE to open-systems based AFP and architecture programming of print monitoring applications on iSeries for a large international appliance manufacturer. He has also been instrumental in developing and implementing various management and form processes for companies such as Farmland and Great Plains Communications.

Prior to MSI, Mr. Wilkie worked for the Maytag Corporation, where he served as Printer Analyst. His responsibilities included developing business plans to show Total Cost of Ownership (TCO) for output, and developing best solution roadmaps for the future of the organization. He additionally was the server administrator for the company's AIX, NT, and iSeries printer spooling; maintained the LAN and WAN digital printing; and implemented Solimar systems and XEROX programming.

Mr. Wilkie has also worked as a COBOL Programmer and Manager for Townsend Industries. In this position, he managed the organization's manufacturing and inventory system in addition to its disaster recovery, backup, and upgrades.

Mr. Wilkie holds an Associate of Applied Sciences degree in Computer Programming.

**Wayne Schieffer**

Senior Systems Engineer

MSI Systems Integrators, Des Moines, Iowa

As a senior systems engineer, Wayne Schieffer plays a key role in delivering advanced network services to MSI customers. He is responsible for the design, implementation, and consulting services in the process of building high available networks, IP communication systems, and security enabled networks. With over 13 years of engineering experience, he has the proven skills and capabilities to implement highly effective networking solutions.

Mr. Schieffer spent three years with IPR, Inc. as a Consulting Systems engineer prior to joining MSI. In this position, he specialized in multi-service integrations working with customers in implementing telephony systems into an IP network. He additionally spent four years prior to that with MSI as a Consulting Systems Engineer, leading a team in internetworking designs and installations.

In addition to earning his Bachelor degree in Electrical Engineering from Iowa State University, Mr. Schieffer has earned several certifications including the following:

- Cisco Certified Internetworking Expert (CCIE #5755)
- Cisco Certified Network Professional (CCNP)
- Cisco Certified Design Professional (CCDP)
- Cisco Certified Network Associate (CCNA)
- Cisco Certified Design Associate (CCDA)
- CQS – Cisco IP Telephony Design Specialist



**David Hecker**

Networking Sales Specialist

MSI Systems Integrators, Des Moines, IA

As a networking sales specialist, David Hecker helps clients review, analyze, and determine the best networking practices for their organizations. With over eight years of sales experience in the technology and communications industry, he has the proven expertise and skills to aid customers in implementing the most efficient and effective resolutions for their networking issues.

Prior to joining MSI, Mr. Hecker provided sales and project management support as a technology sales consultant for SHAZAM Networks. In this role, he worked with banking organizations in determining their need for managed networks, managed security services, risk assessment, risk mitigation, and vulnerability support solutions. Mr. Hecker has also been employed with LEC Services, MCIWorldCom, and Qwest Communications in various sales and account management roles.

**Certifications:**

- Cisco CSE certification
- GIAC Certified Security Consultant

Mr. Hecker has also completed multiple telecom and management training courses.

**Bob Wiggins**

Network Solutions Engineer

MSI Systems Integrators, Des Moines, Iowa

Bob Wiggins brings over 12 years of networking experience to the MSI team and its customers. As a Network Solutions Engineer, he is responsible for the design, implementation, and support for MSI networking solutions including routers, switches, firewalls, and Cisco IP telephony. With Mr. Wiggins' extensive experience working in Cisco environments, he has the proven capabilities to ensure that each customer's networking and business needs are met and exceeded.

Prior to joining MSI, Mr. Wiggins spent eight years with RSM McGladrey in Des Moines as a Senior Consultant. In this position, he provided installation and support services for a variety of networking solutions. He was also employed with DTN Farmdayta as a Networking Manager with similar responsibilities.

***Certifications:***

- CCNP (Cisco Certified Networking Professional)
- CCDP (Cisco Certified Design Professional)
- Cisco IP Telephony Operations Specialist
- Cisco IP Telephony Support Specialist

***Cisco Knowledge:***

- Cisco Call Manager
- Cisco Unity
- Cisco Call Manager Express
- Cisco Unity Express
- Cisco Pix Firewalls
- Cisco Routers
- Cisco Switches

**Denny Gass**

Client Executive

MSI Systems Integrators, Des Moines, Iowa

Denny Gass joined MSI's team in Des Moines, Iowa, as a Client Executive in 2001. Mr. Gass's responsibilities include providing MSI's enabling technology for business to clients based on their needs and initiatives in the manner defined by MSI's Corporate Values.

Mr. Gass brings extensive experience to his position; he has worked in the IT field for almost 40 years. Prior to joining MSI, Mr. Gass worked for one and a half years at TRG Products, where he was a Sales Executive responsible for the sales of handheld products such as Palm OS devices. In addition, Mr. Gass worked for six months as a Client Executive at Sungard, where he marketed Sungard Recovery Services to the company's I/T accounts in Iowa. Mr. Gass was also employed for 33 years as a Marketing Representative at IBM Corporation, where he marketed IBM products and services to Iowa's state and local governments.

**Ken Baker**

Director of Sales, Iowa and Illinois  
MSI Systems Integrators, Cedar Rapids, IA

Ken Baker joined the MSI team in February 2000. Geographically, Mr. Baker serves MSI clients in eastern Iowa and central Illinois. From a solutions standpoint, he specializes in the high-end capabilities available through the S/390, RS/6000, and AS/400 systems.

Mr. Baker draws on nearly 19 years with IBM in architecting solutions designed to help a company grow its business and to address challenges, particularly those related to e-business, that are specific to each individual client. He has worked with companies of all sizes and nearly every industry, such as health care, finance, manufacturing, and insurance.

Mr. Baker earned a master's degree in business administration from the University of Iowa and holds a bachelor's degree in business from Wake Forest University.

In addition to the significant number of employees in Des Moines, MSI will engage the following employees as need throughout the contract.

**Dale Myszewski**

Lead Storage Engineer

MSI Systems Integrators, Milwaukee, Wisconsin

Dale Myszewski works as a storage engineer within MSI's Storage Practice. His responsibilities include overseeing the work of the MSI storage team and providing mentoring support. He assists the team with data migration, storage management consulting and designing, and planning and implementing comprehensive tape and disk storage solutions for customers. Recently, he has worked with Cessna Aircraft, McKesson, Federated Insurance, Merit Care, and Aurora Health Care in solving various storage-related challenges affecting their environments.

Prior to joining MSI in 2001, Mr. Myszewski worked for Metavante Corporation as data storage manager. In this role, he was responsible for all aspects of data storage management from acquisitions to day-to-day storage management.

Mr. Myszewski has a bachelor's degree in business administration degree from the University of Wisconsin in Milwaukee in management information systems. Currently, he is enrolled in the master's degree program in e-Business at the University of Wisconsin in Milwaukee.

**Technical Training:**

- IBM FastT Implementation
- VTS Implementation
- DFSMS Implementation
- DFHSM Diagnostics and Tuning
- McDATA SAN Design and Implementation

**Bob Davis**

System z Solution Sales Specialist  
MSI Systems Integrators, Omaha, NE

With just over 30 years of experience in the IT industry, Bob Davis joined MSI in April 2003. Mr. Davis brought to MSI a wealth of sales experience in calling on a wide range of customers during a 30-year IBM career, the last seven specializing in System z product sales.

Since coming to MSI, Mr. Davis has broadened his System z experience to include work with nearly 50 clients in the Iowa, Nebraska, Missouri, and Kansas geographies. At MSI, Mr. Davis has been instrumental in the sale of numerous System z transactions in accounts such as the University of Iowa, FBL Financial Group, Inc., First National Bank of Omaha, Union Pacific Railroad, Physicians Mutual Insurance, University of Iowa Hospital and Clinics, the State of Nebraska, Wells Fargo Financial, the University of Nebraska, Bank of The West, and many others. His efforts played a significant role in MSI having the best ever System z month in December 2007 and a record-setting performance in fiscal 2007. Mr. Davis was selected to attend the MSI President's Club, MSI's most prestigious sales recognition event, in 2004, 2005, 2006, and 2007.

As an IBM Client Manager and System z Sales Specialist, he worked with many IBM customers, including U.S. West, ConAgra, First Data Resources, Mutual of Omaha, AEGON USA, and Principal Financial Group. During Mr. Davis' career at IBM, he was selected for approximately 22 One Hundred Percent Clubs and five Golden Circles (IBM's premiere sales recognition event).

Mr. Davis is a 1969 graduate of the University of Nebraska at Omaha, where he earned a bachelor's degree in business administration with a major in marketing. He then served as a U.S. Navy Officer from 1969 through 1972 before joining IBM in March of 1973. In 2002,

**Certifications:**

- System z sales practice while at IBM

**Greg Dyche**

System p Sales Specialist

MSI Systems Integrators, Omaha, NE

As a System p sales specialist, Greg Dyche brings 10 years of System p experience to MSI Systems Integrators. He has an extensive background working with System p technology as an engineer, administrator, and a sales specialist. His responsibilities are to help clients implement and manage the System p in their operating environment from high level planning to ground floor implementation. Mr. Dyche is also helping to lead the competitive effort of migrating people from HP or SUN to IBM products.

With his extensive experience, Mr. Dyche has helped many clients in meeting their business needs. He has successfully demonstrated his skills at MSI by assisting in several System p upgrades and implementations. Mr. Dyche's capabilities allow him to coordinate customized configurations to meet and exceed the goals of each project.

Mr. Dyche has also worked as a senior AIX administrator for Methodist Healthcare Systems and managed over 30 System p machines. He additionally worked as an IBM instructor teaching administration and installation courses for Availant. Prior to these positions, Mr. Dyche worked with MSI in the past as an AIX technical expert.

He has a bachelor's degree in management from Bellevue University.

**Certifications:**

- IBM AIX Technical Expert.
- IBM Virtual Engine Suite for Servers Sales Mastery
- System p Top Gun, April 2007

**Rob Johnson**

Open Systems Solutions Engineer  
MSI Systems Integrators, Omaha, Nebraska

Rob Johnson is a System p engineer on the eServer team at MSI in Omaha. Mr. Johnson has been certified by IBM as an advanced technical expert. He has attained the certified specialist and solution expert certifications for MQ Series. In addition, Mr. Johnson holds numerous other IBM certifications. He has been with MSI since the company was founded in 1992. Prior to that, he spent four years as a marketing support engineer with IBM. His areas of expertise include AIX, LPAR, Virtual I/O, MQ Series, performance tuning, host connectivity, and high availability clustered multi-processing (HACMP).

Mr. Johnson has worked with a number of clients that include Sitel Corporation, Bryan Memorial Hospital, Alegent Health, Methodist Hospital, and West Interactive. His accomplishments include the completion of an RS/6000 SP data warehousing installation. This entailed a redesign of West's client reporting system, a two-year project that replaced an old system that had no room for expansion with a fast, new system whose growth potential is virtually unlimited. He has also worked extensively with Target Corporation in Minneapolis on its distribution center in conjunction with its HACMP rollouts.

Mr. Johnson holds a bachelor's degree and a master's degree in computer science from the University of Nebraska in Omaha.



*SECTION 11*

***APPENDIX B – COMPLETED RFP FORMS***

On the following pages are completed RFP forms.

**RFP ATTACHMENT 1**

**PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION  
WITHIN TECHNICAL PROPOSAL**

**PROPOSAL CERTIFICATION**

I certify that I have the authority to bind the vendor indicated below to the specific terms, conditions and technical specifications required in the attached Request for Proposal 808005440 and offered in the vendor's proposal. I understand that by submitting this proposal, the vendor indicated below agrees to provide the services, which meet or exceed the requirements of the RFP unless noted in the proposal and at the prices quoted by the vendor.

I certify that the contents of the proposal are true and accurate and that the vendor has not knowingly made any false or misleading statements in the proposal.

\_\_\_\_\_  
Signature

April 15, 2008  
\_\_\_\_\_  
Date

Denny Gass  
\_\_\_\_\_  
Printed Name and Title

MSI Systems Integrators, Inc  
\_\_\_\_\_  
Name of Vendor Organization

**RFP ATTACHMENT 2**

**PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION  
WITHIN TECHNICAL PROPOSAL**

**CERTIFICATION OF INDEPENDENCE AND  
NO CONFLICT OF INTEREST**

By submission of a proposal in response to RFP 808005440, the vendor certifies (and in the case of a joint proposal, each party thereto certifies) that the proposal has been developed independently, without consultation, communication or agreement with any employee or consultant of the Department who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee; the proposal has been developed independently, without consultation, communication or agreement with any other vendors or parties for the purpose of restricting competition; unless otherwise required by law, the information in the proposal has not been knowingly disclosed by the vendor and will not knowingly be disclosed prior to the award of the contract, directly or indirectly, to any other vendor; no attempt has been made or will be made by the vendor to induce any other vendor to submit or not to submit a proposal for the purpose of restricting competition; no relationship exists or will exist during the contract period between the vendor and the Department that interferes with fair competition or is a conflict of interest.

April 15, 2008

Signature:

Date:

Denny Gass

Printed Name and Title

MSI Systems Integrators, Inc

Name of Vendor Organization

**RFP ATTACHMENT 3**

**PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION  
WITHIN TECHNICAL PROPOSAL**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this Proposal in response to RFP 808005440, the vendor is providing the certification set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the vendor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The vendor shall provide immediate written notice to the person to which this Proposal is submitted if at any time the vendor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
4. The vendor agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The vendor further agrees by submitting this Proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(1) The vendor certifies, by submission of this Proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(2) Where the vendor is unable to certify to any of the statements in this certification, such vendor shall attach an explanation to this Proposal.

April 15, 2008

\_\_\_\_\_  
Signature:

Denny Gass

\_\_\_\_\_  
Printed Name and Title

MSI Systems Integrators, Inc

\_\_\_\_\_  
Name of Vendor Organization

\_\_\_\_\_  
Date:

**RFP ATTACHMENT 4**

**PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION  
WITHIN TECHNICAL PROPOSAL**

**AUTHORIZATION TO RELEASE INFORMATION**

MSI Systems Integrators, Inc \_\_\_\_\_ (Name of vendor) hereby authorizes any person or entity, public or private, having any information concerning the vendor's background, including but not limited to its performance history regarding its prior rendering of services similar to those detailed in RFP 808005440, to release such information to the Department.

The vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the Department or may otherwise hurt its reputation or operations.

The vendor is willing to take that risk. The vendor agrees to release all persons, entities, the Department, and the State of Iowa from any liability whatsoever that may be incurred in releasing this information or using this information.

MSI Systems Integrators, Inc

\_\_\_\_\_  
Printed Name of Vendor Organization

\_\_\_\_\_  
April 18, 2008

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Denny Gass

\_\_\_\_\_  
Printed Name and Title

RFP ATTACHMENT 5

PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION  
WITHIN TECHNICAL PROPOSAL

**CERTIFICATION OF CONFIDENTIALITY  
AND NONDISCLOSURE AGREEMENT**

I Denny Gass (Print Name)

For MSI Systems Integrators, Inc (Vendor)

acknowledge that in the performance of responsibilities under a contract my company may acquire or have access information regarding State of Iowa employees, clients and/or Iowa citizens and that such information is designated as "proprietary and confidential".

I acknowledge that my company may be subject to significant Federal and State criminal and civil penalties if it misuses or improperly releases / discloses the confidential information it may acquire or have access to.

Therefore, my company agrees not to disclose or misuse such information except for purposes of performing under the contract. If there is doubt over confidentiality, we will regard it as confidential information. We further agree to adhere to any written procedures and policies with respect to the handling of confidential information.

I understand, acknowledge, and agree that this confidentiality and nondisclosure agreement remains in full force and effect after the conclusion, termination or expiration of the contract.

\_\_\_\_\_  
(Signature) Date: April 15, 2008

**RFP ATTACHMENT 6**

**PROSPECTIVE VENDORS – SIGN AND SUBMIT WITH TECHNICAL PROPOSAL.**

**CERTIFICATION REGARDING REGISTRATION, COLLECTION, AND REMISSION OF STATE SALES  
AND USE TAX**

Pursuant to 2005 Iowa Acts SF 413 – which creates new Iowa Code subsections 423.2(9A) & 423.5(8) – a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under Iowa Code chapter 423 on all sales of tangible personal property and enumerated services. The Act also requires vendors to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

By submitting a proposal in response to Request for Proposal # 808005440, the undersigned certifies the following:  
(check the applicable box)

Our Company is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423;

**OR**

Our Company is not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(42) & (43).

Our Company also acknowledges that the State of Iowa may declare our bid or resulting contract void if the above certification is false. Our Company also understands that fraudulent certification may result in the State of Iowa or its representative filing for damages for breach of contract.

MSI Systems Integrators, Inc

\_\_\_\_\_  
Printed Name of Vendor Organization

April 15, 2008

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Denny Gass

\_\_\_\_\_  
Printed Name and Title



**RFP ATTACHMENT 7**

**PROSPECTIVE VENDORS – SIGN AND SUBMIT WITH TECHNICAL PROPOSAL**

**CERTIFICATION OF AVAILABLE RESOURCES**

I certify that the bidder organization indicated below has sufficient personnel resources available to provide all services proposed by this Bid Proposal. I duly certify that these personnel resources for the contract awarded will be available.

April 15, 2008

\_\_\_\_\_  
NAME

\_\_\_\_\_  
DATE

Client Executive

\_\_\_\_\_  
TITLE

MSI Systems Integrators, Inc

\_\_\_\_\_  
NAME OF VENDOR ORGANIZATION

**RFP ATTACHMENT 8**

**PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION  
WITH TECHNICAL PROPOSAL**

**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid on behalf of the Sub-Grantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, an officer or employee of the Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan or cooperative agreement,

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions,

C. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.A. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: \_\_\_\_\_

Title: Denny Gass

Organization: MSI Systems Integrators, Inc

Date: April 15, 2008



## REQUEST FOR PROPOSALS (RFP) COVER SHEET

TITLE OF RFP:	<b>IBM HARDWARE, SOFTWARE AND SERVICES</b>	RFP #:	<b>808005440</b>
Lead Agency:	Iowa Dept of Administrative Services, General Services Enterprises		
Participating Agencies:	All	Available to Political Subdivisions?	Yes
Initial term of the contract:	3 years	Number of annual renewals:	Three
<p>Throughout the competitive acquisition process, interested service providers shall contact only the <b>State Issuing Officer</b>:</p> <p style="text-align: center;">             Ashley Super, Purchasing Agent III              Iowa Department of Administrative Services              GSE Purchasing Division              Hoover State Office Building –Level A              Des Moines, Iowa 50319-0105              Phone: 515-281-7073              Fax: 515-242-5974              E-mail: <a href="mailto:Ashley.Super@iowa.gov">Ashley.Super@iowa.gov</a> </p>			
<b>PROCUREMENT TIMETABLE</b> —Event or Action:			Date/Time (CT):
State Posts Notice of RFP on TSB website:			March 17, 2008
State Issues RFP at <a href="http://bidopportunities.iowa.gov/">http://bidopportunities.iowa.gov/</a> :			March 19, 2008
Optional Letters of Intent to Bid:			March 31, 2008
Written questions, requests for clarification from Vendors due:			March 31, 2008
Lead Agency's written response to questions:			April 8, 2008
<b>Bid Proposals Due:</b>			<b>April 21, 2008 at 3:00 PM CT</b>
Website where Addenda to this RFP will be posted:		<a href="http://bidopportunities.iowa.gov/">http://bidopportunities.iowa.gov/</a>	
Number of Copies of the Bid Proposal Required to be Submitted:		5 copies plus one on CD	
Firm Bid Proposal Terms: Minimum Number of Days following the deadline for submitting bid proposals that the Contractor guarantees all bid proposal terms, including price, will remain firm:			180 days

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## Section 1 Introduction

### 1.1 Purpose

The purpose of this Request for Proposals (RFP) is to solicit a proposal from qualified vendors to provide a three (3) year Multi-Vendor Statewide General Master Contract for the purpose of facilitating future acquisitions of IBM OEM Hardware, Software, Accessories, and Services in lieu of an additional competitive selection processes by state agencies and political subdivisions (cities, counties, schools etc.) within the State of Iowa.

The contract shall NOT be a contract for unchecked sales of IBM products and services over \$5,000, in lieu of competitive selection where 1) competition clearly exists between IBM and other Original Equipment Manufacturers and other Publishers of otherwise equal products, and 2) where the agency has no justification for sole source procurement as defined in Administrative Rule 11- 105.4(5) viewable at: <http://www.legis.state.ia.us/Rules/Current/iac/11/11105/11105.pdf>, such as where the procurement is of such a specialized nature that only IBM by virtue of experience, expertise, or ownership of intellectual property rights can most satisfactorily provide the good or service; or where the procurement is an for a device or service that is systems software or an upgrade, where compatibility is the overriding consideration, or the procurement would prevent voidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation.

The awarded contract(s) will replace and supersede current contracts CT2825MV with IBM and MSI; however, previously on-going current agreements made under CT2825MV may continue under the provisions of CT2825MV until the term of those previous agreements expire or are terminated.

Proposals will be accepted only from vendors who offer the complete family of IBM products, software and services for all platforms; all others shall be deemed non-compliant and will subsequently be rejected.

### 1.2 Background Information

This RFP is designed to provide bidders with the information necessary for the preparation of competitive bid proposals. The RFP process is for the State's benefit and is intended to provide the State of Iowa with competitive information to assist in the selection process. It is not intended to be comprehensive. Each bidder is responsible for determining all factors necessary for submission of a comprehensive bid proposal. The State adheres to all applicable federal and state laws, rules, and regulations when entering into a contract for hardware, software and services.

**VENDORS ARE CAUTIONED TO FOLLOW ALL DIRECTIONS IN THIS RFP FOR  
PROPOSAL SUBMISSION OR RISK DSQUALIFICATION.**

## Section 2 Administrative Information

### 2.1 Issuing Officer

The Issuing Officer, identified below, is the sole point of contact regarding the RFP from the date of issuance until selection of the successful bidder.

Ashley Super, Purchasing Agent III  
Iowa Department of Administrative Services  
GSE Purchasing Division  
Hoover State Office Building –Level A  
1305 East Walnut St.  
Des Moines, Iowa 50319-0105

### 2.2 Restriction on Communication

From the issue date of this RFP until announcement of the successful bidder(s), potential bidders may contact only the Issuing Officer with questions regarding the RFP. Only the Issuing Officer shall respond to questions regarding this procurement process. Questions related to the interpretation of the RFP will follow the timetable and process set for in Section 2.4 and 2.5 respectively. The department reserves the right to disqualify bidders if they contact any state employee other than the Issuing Officer regarding this RFP. State employees who do receive inquiries from vendors about the RFP are to refer the vendor to the Issuing Officer and/or to forward those inquiries to the Issuing officer. Note: This section does not apply to ongoing communications between the state and vendors regarding day to day current projects/business or subjects not related to the RFP.

### 2.3 Downloading the RFP from the Internet

The RFP and all amendments will be posted at <http://bidopportunities.iowa.gov/>. The bidder is advised to check the web page periodically for any amendments to this RFP, particularly if the RFP was originally downloaded from the Internet. Bidders downloading the RFP from the Internet may not automatically receive amendments. Bidders who submit a Letter of Intent to Submit a Proposal will automatically receive amendments.

### 2.4 Procurement Timetable

The following dates are set forth for informational and planning purposes; however, the State reserves the right to change the dates. The Department intends to announce the winning bidder as soon as the evaluation team selects the winning proposal.

Activity	Due Date
Cutoff for Questions	March 31, 2008
Letters of Intent Due	March 31, 2008
Response to Questions Sent	April 8, 2008
Proposals Due at 3:00 PM CT on	April 21, 2008

### 2.5 Bidders Questions and Suggested Changes

Bidders are invited to submit written questions and requests for clarifications regarding the RFP. Bidders may also submit suggestions for changes to the requirements of this RFP. The questions, requests for clarifications, or suggestions must be in writing and received by the issuing officer on the date specified in Section 2.4. Oral questions will not be permitted. If the



questions, requests for clarifications, or suggestions pertain to a specific section of the RFP, the page and section number(s) must be referenced.

Written responses to questions, requests for clarifications, or suggestions will be published by formal amendment to the RFP and sent on or by the date specified in Section 2.4 to bidders who have submitted a letter of intent by the required date. The bidder shall acknowledge receipt of the department's response. The department's written responses will be considered part of the RFP. If the department decides to adopt a suggested change, the department will do so by formal amendment to the RFP. The department assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP.

## **2.6 Letters of Intent to Bid**

If a bidder is sending a letter of intent to bid it must be mailed, sent via delivery service, electronic mail, faxed or hand delivered by the bidder or the bidder's representative to the issuing officer and received by the date specified in Section 2.4. The letter of intent to bid must include the bidder's name, mailing address, electronic mail address, fax number, telephone number, a statement of intent to bid, and an authorizing signature.

Submitting a letter of intent to bid is not a mandatory requirement to submit a bid proposal but it does ensure receipt of written responses to bidders' questions and amendments to the RFP. The RFP,

including any amendments, will still be available on the State's website at:

<http://bidopportunities.iowa.gov/>

## **2.7 Amendment to the RFP and Bid Proposal and Withdrawal of Bid Proposal**

The department reserves the right to amend the RFP at any time. The bidder shall acknowledge receipt of an amendment in its proposal. If the amendment occurs after the closing date for receipt of bid proposals, the department may, in its sole discretion, allow bidders to amend their bid proposals if necessary.

The bidder may amend its bid proposal. The amendment must be in writing and signed by the bidder. The issuing officer must receive the amendment by the deadline for submitting proposals. Electronic mail and faxed amendments will not be accepted.

The bidder may withdraw its bid proposal prior to the closing date for receipt of bid proposals by submitting a written request to withdraw to the issuing officer. Electronic mail and faxed requests to withdraw will not be accepted.

## **2.8 Submission of Bid Proposals**

The bid proposal must be received by the Issuing Officer by 3:00 p.m., Central Time, on the date specified in Section 2.4. Any bid proposal received after this deadline will be rejected and returned unopened to the bidder. Bidders mailing bid proposals must allow ample mail delivery time to ensure timely receipt of their bid proposals. It is the bidder's responsibility to ensure that the bid proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the bid proposal by the Department. Electronic mail and faxed bid proposals will not be accepted.

## **2.9 Bid Proposal Opening**

The Department will open bid proposals at 3:00 PM central time, on the date specified in Section 2.4. The bid proposals will remain confidential until the Evaluation Committee has reviewed all of the bid proposals submitted in response to this RFP and the Department has announced a notice of intent to award a contract. See Iowa Code Section 72.3.

## **2.10 Costs of Preparing the Bid Proposal**

The costs of preparation and delivery of the bid proposal are solely the responsibility of the bidder.

## **2.11 Rejection of Bid Proposals**

The Department reserves the right to reject any or all bid proposals, in whole and in part, and to cancel this RFP at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by the Department to award a contract

## **2.12 Disqualification**

The Department may reject outright and shall not evaluate proposals for any one of the following reasons:

- 2.12.1** The bidder fails to deliver the bid proposal by the due date and time.
- 2.12.2** The bidder fails to deliver the cost proposal in a separate envelope.
- 2.12.3** The bidder states that a required technical requirement cannot be met or a required capability is not included in the price. Proposals will be accepted only from authorized vendors who offer the complete family of IBM products, software and services for all platforms, all others shall be deemed non-compliant and will subsequently be rejected.
- 2.12.4** The bidder's response materially changes a required technical or capability requirement.
- 2.12.5** The bidder's response limits the rights of the Department.
- 2.12.6** The bidder fails to include information necessary to substantiate that it will be able to meet a technical requirement or capability requirement. A response of "will comply" or merely repeating the requirement is not sufficient.
- 2.12.7** The bidder fails to respond to the Department's request for oral demonstrations.
- 2.12.8** The bidder fails to respond to the Department's request for information; documents; or references.
- 2.12.9** The bidder fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in *Section 4* of this RFP.
- 2.12.10** The bidder presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- 2.12.11** The bidder initiates unauthorized contact regarding the RFP with state employees.
- 2.12.12** The bidder provides misleading, unbalanced or inaccurate responses.
- 2.12.13** The bidder fails to explain any assumptions made in their proposal. Any uncertainties on the bidders part must be resolved through the questions submitted to the State per Section 2.5. The bidder may submit more than one proposal to address alternative assumptions not clarified by the State.

## **2.13 Nonmaterial and Material Variances**

The Department reserves the right to waive or permit cure of nonmaterial variances in the bid proposal's form and content providing, in the judgment of the Department, such action is in the best interest of the Department. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other bidders; that do not change the meaning or scope of the RFP; or that do not reflect a material change in the services. In the event the Department waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP requirements or excuse the bidder from full compliance with RFP specifications or other contract

requirements if the bidder is awarded the contract. The determination of materiality is at the sole discretion of the Department.

#### **2.14 Reference Checks**

The Department reserves the right to contact any reference to assist in the evaluation of the bid proposal, to verify information contained in the bid proposal and to discuss the bidder's qualifications and the qualifications of any subcontractor identified in the bid proposal.

#### **2.15 Information from Other Sources**

The Department reserves the right to obtain and consider information from other sources concerning a bidder, such as the bidder's capability and performance under other contracts.

#### **2.16 Verification of Bid Proposal Contents**

The contents of a bid proposal submitted by a bidder are subject to verification. Misleading or inaccurate responses shall result in disqualification.

#### **2.17 Criminal History and Background Investigation**

The Department reserves the right to conduct criminal history and other background investigation of the bidder, its officers, directors, shareholders, or partners and managerial and supervisory personnel retained by the bidder for the performance of the contract.

#### **2.18 Bid Proposal Clarification Process**

The Department may request clarifications from bidders for the purpose of resolving ambiguities or questioning information presented in the bid proposals. Clarifications may occur throughout the bid proposal evaluation process. Clarification responses shall be in writing and shall address only the information requested. Responses shall be submitted to the Department within the time stipulated at the occasion of the request.

#### **2.19 Disposition of Bid Proposals**

All bid proposals become the property of the Department and shall not be returned to the bidder unless all bid proposals are rejected or the RFP is cancelled. In either event, bidders will be asked to send prepaid shipping instruments to the Department for return of the bid proposals submitted. In the event the Department does not receive shipping instruments, the Department will destroy the bid proposals. Otherwise, at the conclusion of the selection process, the contents of all bid proposals will be in the public domain and be open to inspection by interested parties subject to exceptions provided in Iowa Code Chapter 22 or other applicable law.

#### **2.20 Public Records and Request for Confidential Treatment**

All information submitted by a bidder may be treated as public information by the Department following the conclusion of the selection process unless the bidder properly requests that information be treated as confidential at the time of submitting the bid proposal. The Department's release of information is governed by Iowa Code Chapter 22. Bidders are encouraged to familiarize themselves with Chapter 22 before submitting a proposal. The Department will copy public records as required to comply with the public records laws.

Any request for confidential treatment of information must be included in the transmittal letter with the bidder's bid proposal. In addition, the bidder must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law, which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the bidder to respond to any inquiries by the Department concerning the confidential status of the materials.

Any bid proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire bid proposal as confidential shall be deemed non-responsive and disqualify the bidder.

If the bidder designates any portion of the bid proposal as confidential, the bidder must submit one paper copy and one copy on CD of the bid proposal from which the confidential information has been excised and must be conspicuously marked on the outside as "Public Copy". This excised copy is in addition to the number of copies requested in *Section 4* of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.

The Department will treat the information marked confidential as confidential information to the extent such information is determined confidential under Iowa Code Chapter 22 or other applicable law by a court of competent jurisdiction.

In the event the Department receives a request for information marked confidential, written notice shall be given to the bidder seventy-two (72) hours prior to the release of the information to allow the bidder to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.

The bidder's failure to request confidential treatment of material pursuant to this section and the relevant law will be deemed by the Department as a waiver of any right to confidentiality which the bidder may have had.

## **2.21 Copyrights**

By submitting a bid proposal, the bidder agrees that the Department may copy the bid proposal for purposes of facilitating the evaluation of the bid proposal or to respond to requests for public records. The bidder consents to such copying by submitting a bid proposal represents and warrants that such copying will not violate the rights of any third party. The Department shall have the right to use ideas or adaptations of ideas that are presented in the bid proposals.

## **2.22 Release of Claims**

By submitting a bid proposal, the bidder agrees that it will not bring any claim or cause of action against the Department based on any misunderstanding concerning the information provided herein or concerning the Department's failure, negligent or otherwise, to provide the bidder with pertinent information as intended by this RFP.

## **2.23 Demonstrations**

At the discretion of the State, qualified bidders may be required to do a mandatory on-site interactive demonstration / oral presentation of their proposed solution. A representative of the Department will contact qualified bidders to schedule their demonstration. The determination of the structure/focus of the demonstration is at the sole discretion of the State. The demonstration shall not materially change the information contained in the original written bid proposal.

## **2.24 Evaluation of Bid Proposals**

Bid proposals that are timely submitted and are not subject to disqualification will be reviewed in accordance with Sections 4 and 5 of the RFP.

## **2.25 Notice of Intent to Award**

Notice of Intent to Award the contract will be sent by mail to all bidders submitting a timely bid proposal. The Notice of Intent to Award is subject to execution of a written contract and, as a

result, the Notice does not constitute the formation of a contract between the Department and the apparent successful bidder.

## **2.26 Acceptance Period**

Negotiation and execution of the contract shall be completed no later than the date specified in Section 2.4. If the apparent successful bidder fails to negotiate and execute a contract, in its sole discretion, the Department may revoke the award and award the contract to the next highest ranked bidder or withdraw the RFP.

The Department further reserves the right to cancel the award at any time prior to the execution of a written contract.

## **2.27 Review of Award Decision**

A vendor whose proposal has been timely filed and who is aggrieved by the award of the department may appeal the decision by filing a written notice of appeal (in accordance with 11—Chapter 105.20, Iowa Administrative Code) to: The Director of the Department of Administrative Services, Hoover State Office Building, Des Moines, Iowa 50319-0104 and a copy to the issuing officer. The notice must be filed within five days of the date of the Intent to Award notice issued by the Department, exclusive of Saturdays, Sundays, and legal state holidays. The written notice may be filed by fax transmission to 515.242.5974. The notice of appeal must clearly and fully identify all issues being contested by reference to the page, section and line number(s) of the RFP and / or the notice of Intent to Award. A notice of appeal may not stay negotiations with the apparent successful vendor.

## **2.28 Definition of Contract**

The full execution of a written contract shall constitute the making of a contract for services and no bidder shall acquire any legal or equitable rights relative to the contract services until the contract has been fully executed by the apparent successful bidder and the Department.

## **2.29 Choice of Law and Forum**

This RFP and the resulting contract are to be governed by the laws of the state of Iowa without giving effect to the choice of law provision thereof. Changes in applicable laws and rules may affect the award process or the resulting contract. Bidders are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

## **2.30 Restrictions on Gifts and Activities**

Iowa Code Chapter 68B restricts gifts which may be given or received by state employees and requires certain individuals to disclose information concerning their activities with state government. Bidders are responsible to determine the applicability of this Chapter to their activities and to comply with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

## **2.31 No Minimum Guaranteed**

The Department anticipates that the selected bidder will provide services as requested by the Department. The Department will not guarantee any minimum compensation will be paid to the bidder or any minimum usage of the bidder's services.

## Section 3 Requirements

### 3.1 Introduction

The purpose of this Request for Proposals (RFP) is to solicit a proposal from qualified Vendors to provide a three (3) year Multi-Vendor Statewide General Master Contract for the purpose of facilitating future acquisitions of the complete product line from IBM (i.e. Hardware, Software, Accessories, and Services) in lieu of an additional competitive selection process by state agencies and political subdivisions (cities, counties, schools etc.) within the State of Iowa. The contract will include all supporting operating software, maintenance, accessories and associated services for any IBM product and their predecessors / successors.

This RFP is designed to provide bidders with the information necessary for the preparation of competitive bid proposals. The RFP process is for the State's benefit and is intended to provide the State of Iowa with competitive information to assist in the selection process. It is not intended to be comprehensive. Each bidder is responsible for determining all factors necessary for submission of a comprehensive bid proposal. The State adheres to all applicable federal and state laws, rules, and regulations when entering into a contract for hardware, software and services.

The contract will not be for general consulting, data processing or software development not directly associated with the standard commercially available IBM product line. The resulting contract(s) will replace and supersede multiple vendor contract CT2825 but not necessarily the Iowa WSCA Contract A63311.

The State anticipates awarding a contract to two vendors. More than two vendors may be awarded if the state decides that more than two awards are in the best interests of the state. The annual dollar volume is estimated to be approximately 10 million dollars, however no amount of business is guaranteed.

### 3.2 Vendor Requirements

DAS GSE has identified the following vendor requirements:

1. REFERENCES: Contractor proposals must include a minimum of three (3) current client references where the contractor holds a similar contract of similar size and scope. State contact person, Mailing address, Email address telephone and FAX numbers in the proposal.
2. The contractor must be a Certified IBM Partner (Value Added Re-Seller) in good standing. Vendors must provide proof of certification/authorization within their proposal.
3. Proposals will be accepted only from vendors who offer the complete family of IBM products, software and services for all platforms, all others shall be deemed non-compliant and will subsequently be rejected.
4. Personnel assigned by the contractor shall possess cumulative experience in managing and delivering IBM server products services. Contractor proposals shall include the identity and resumes of personnel that will be assigned to support the contract. The State reserves the right to review and approve contractor/sub-contractor personnel prior to their assignment and to request changes of selected personnel after their assignment.

5. Vendor must provide a current Annual Report to Stockholders or a statement of financial condition.
6. Vendor must include basic corporate information to include, but not be limited to size, date of incorporation, staffing and warehouse locations.
7. Vendor must state in their proposal the name, address, telephone number, facsimile number, and email address of the legal entity that would be entering into the contract. State the names, addresses, telephone numbers, facsimile numbers, and email addresses of the Contractor's principal officers. State the Contractor's type of legal entity. Contractor proposals must include basic corporate and sub-contractor information to include, but not be limited to, ownership, size, and relationship with larger owner, financial resources, date of incorporation, and staffing locations. Attach a W9 form to Proposal.
8. Vendor must be prepared to provide E-Procurement Services when requested, such as on-line ordering and order / license tracking; Order History Reporting; integration with E-Procurement tools used by the State.
9. Vendor must be knowledgeable of, support and uphold Enterprise Standards set by the Information Technology Enterprise of the Department of Administrative Services.

Reference: [www.das.ite.iowa.gov/standards/](http://www.das.ite.iowa.gov/standards/)

10. Bidder must acknowledge and agree to the following MANDATORY CONDITIONS OF CONTRACT:
  - a) The Iowa Department of Administrative Services will be Contract Administrator of any resulting Master Agreement with the State of Iowa.
  - b) Proposed percentage discounts are considered the minimum discount offered and stated prices are to be considered maximum prices(quantity one pricing). The Contractor may offer, within written quotes, a higher discount or lower price than the approved minimum discount or maximum price for volume purchases or for competitive reasons.
  - c) The Contractor shall provide an electronic detailed quarterly report on all sales made against this agreement within the State of Iowa to the Iowa Department of Administrative Services. The report file format shall be Microsoft Excel compatible format. The report at minimum shall include the date of sale, customer name and address, full product description, SKU Numbers, quantity, invoice number, unit and extended invoice prices. Vendor proposals must include a sample report and a description of the reporting that will be provided. The State reserves the right to requests more detailed information (ad-hoc reporting) at any time and on an individual or specific basis for a specific product, department, time frame, or for a range of products, departments or time frames.
  - d) Without affecting the approved discounts or prices specified in the Master Price Agreement herein, the Contractor shall provide to the Iowa Department of Administrative Services a 1.00% Administrative Fee on all sales made within the State of Iowa against this agreement. The fee is to be paid quarterly to the Iowa Department of Administrative Services.
  - e) THE CONTRACTOR MUST PREPARE AND SUBMIT TO IBM ALL REQUIRED REPORTS (I.E. CERTIFICATIONS, ETC.) AND PERFORM OTHER DUTIES AS REQUIRED BY IBM TO ENSURE THAT THE STATE IS COMPLIANT WITH APPLICABLE LICENSING AGREEMENTS.
11. Vendor must inform and assist state as necessary to take advantage of Special Offers, Promotions, new releases, bundles, rebates, volume purchase agreements, availability of site

licenses or master upgrade programs, eligibility for additional academic discounts, etc. that are offered by either IBM or the contractor.

12. Vendor must accept payment by EFT or Credit Card. Please indicate in your proposal if any additional discounts are given for electronic payments.

### **3.3 Hardware Requirements**

- a) A “discount off list” pricing structure must be proposed with all shipping and handling costs included in price, FOB Destination. Vendor proposals must include a complete catalog and their discount off retail price list of all offered SKUs hardware, in both an electronic (MS Word or Excel compatible) and a hardcopy format. The discount, FOB destination, structure shall remain firm for the life of the contract.
- b) All equipment proposed must be IBM manufactured, must be new or reconditioned and warranted as new and of the current engineering change (EC) at the time of delivery. Delivery of reconditioned equipment must be approved in advance.
- c) Vendors shall make no changes or substitutions of any IBM component at any time during the term of this contract without the expressed written approval of the purchasing authority. Vendors are authorized to ship alternate/third party components only when specified on the purchase order. UNAUTHORIZED SUBSTITUTION OF OEM COMPONENTS SHALL BE CONSIDERED BREACH OF THE CONTRACT.
- d) Discount offered must be “best” price as ‘best and final offers’ will not be accepted.
- e) Throughout the term of the contract the Contractor must provide an easy to use, accurate, current, web accessible catalog of products with government and educational discount, FOB destination prices. The pricelist must be kept current and be accessible via the world-wide-web 24 hours per day, 7 days per week.
- f) Vendors must also include and describe goods, services and training etc that are “over-and-above” the requirements and conditions stated herein, that are provided/included without any additional cost and/or with additional cost.
- g) Hardware must carry at a minimum the full USA standard OEM warranty to be free of defects. Articulate, by product, the proposed product warranties that exceed the standard OEM warranty that will be provided (without additional cost).
- h) Vendor must provide extended maintenance (following warranty) service options. Please list and describe each option and associated costs.

### **3.4 Software Requirements**

- a) A “discount off list” pricing structure must be proposed with all shipping and handling costs included in price, FOB Destination. Vendor proposals must include a complete catalog and their discount off retail price list of all offered SKUs of software, in both an electronic (MS Word or Excel compatible) and a hardcopy format. The discount, FOB destination, structure shall remain firm for the life of the contract.
- b) The vendor must ensure that valid product licenses are received at the time, or before, receipt of the product.
- c) The vendor must routinely provide educational materials informing Departments / Agencies of product and license abuse liability and penalties. Proposals must describe in detail how this information will be provided.



- d) Software must carry the full USA OEM warranty to be free of defects.
- e) If requested, vendor must provide available “evaluation” copies of software. If accepted, agency will be invoiced for the software, if not accepted the software will be returned within thirty (30) days after receipt. Vendor’s proposals must include an evaluation copy catalog or list of software available for evaluation.
- f) Vendor must provide extended maintenance service options. Please list and describe each option and associated costs.
- g) Contractor must be able to support and manage any IBM VLAs/LPs. Describe the services you would provide.
- h) The same discount structure must be used for any VLA or LP entered into.

### **3.5 Services Requirements**

- a) Vendor must offer the complete product line of IBM including related supporting operating software, maintenance, accessories and associated services only for these products and their predecessors.
- b) Proposals are not to include non-IBM related products or services, (general consulting, custom software development, etc).
- c) Services for System Integration between customer equipment and IBM product(s) are to be included.
- d) Describe the availability, arrangements, and processes that are in place that are provided, without additional cost, to ensure that customers have immediate access to IBM’s technical support staffs.
- e) Describe additional technical support services that are offered and available for an additional cost.
- f) Vendor must provide, without any additional costs to the State, sales assistance and the services of a Technical Support Center. Vendors must describe how the account will be serviced and what sales assistance and the level of technical support that will be provided without any additions costs. Include a description and “fee” schedule for technical support services.
- g) Vendor must provide excerpts from your marketing plan that demonstrates how you would identify the current and future IBM hardware and software needs of Iowa state agencies, cities, counties and public schools and how you would satisfy those needs.
- h) Vendor must provide extended maintenance service options. Vendor must list and describe each option and associated costs.
- i) Describe on-site services that will be provided. Include promise response times to help calls by geographical coverage within the State of Iowa.

### **3.6 Leasing Requirements**

- a) Vendor must offer an option for leasing (renting) equipment.
- b) See proposed Master Lease Agreement (RFP Attachment 13)
- c) Describe your leasing program in your proposal

- d) End of lease options shall not include or permit a special (bargain) purchase price or a purchase price that is less than the fair-market-value (FMV) of the equipment.
- e) Vendors shall not offer leases commonly known as lease-to-own, lease/purchase, conditional sales, or any other similar lease agreement.

### **3.7 Proposal Requirements**

#### **A. Proposal Summary**

Contractor proposals must include a brief (no more than ten pages) Process Model which explains how their proposed solution for providing the products and services best supports the requirements of this Request For Proposal.

#### **B. Work Plan**

A work plan must be included in the proposal and at a minimum shall describe how the contract will be managed, prioritized and controlled. This must include a management structure (with organizational chart) and the method of status reporting (include an example of a Management/Status Report). The work plan shall describe order procedure, including escalation and measures, for resolving problems and complaints. The work plan shall describe the process to notify and distribute upgrades, patches, etc. to agencies covered by a support agreement.

#### **C. Product Catalog and Pricing:**

1. A "discount off list" pricing structure must be proposed with all shipping and handling costs included in price, FOB Destination. Vendor proposals must include a complete catalog and their discount off retail price list of all offered SKUs of hardware, and software, in both an electronic (Compatible with MS Word or Excel) and a hardcopy format. The minimum discount structure shall remain firm for the life of the contract.
2. Both hardware and software catalogs, showing discounted prices and discounts, shall be updated at least annually or as new products are offered.
3. Discount submitted must be "best" price as best and final offers will not be accepted.
4. Throughout the term of the contract the Contractor must provide an easy to use, accurate, current, web accessible catalog of products and services with government and educational discount, FOB destination prices. The pricelist must be kept current and be accessible via the world-wide-web 24 hours per day, 7 days per week.
5. Vendors must also include and describe goods, services and training etc that are "over-and-above" the requirements and conditions stated herein, that are provided/included without any additional cost and/or with additional cost.

#### **D. Point by Point Response to RFP Section 3, as instructed in Section 4.**

## **Section 4     Format and Content of Bid Proposals**

These instructions prescribe the format and content of the bid proposal and are designed to facilitate the submission of a bid proposal that is easy to understand and evaluate. Failure to adhere to the proposal format shall result in the disqualification of the bid proposal.

### **4.1 Instructions**

- 4.1.1** The bid proposal shall be typewritten on 8.5" x 11" paper (one side only).
- 4.1.2** The bid proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal. The Technical Proposal and the Cost Proposal shall be placed in separate envelopes. The entire bid proposal shall be sealed in another envelope (or a box if necessary to accommodate the size of the bid proposal). If the Technical Proposal is in multiple volumes, the volumes shall be numbered in the following fashion: 1 of 4, 2 of 4, etc. The envelopes shall be labeled with the following information:
  - RFP Title & Number
  - Department's Address
  - Bidder's Name and Address
- 4.1.3** One (1) original and 5 copies of the bid proposal, each in a sealed envelope, and one copy on CD shall be timely submitted to the Issuing Officer. The envelope containing the original bid proposal shall be labeled "original" and each envelope containing a copy of the bid proposal shall be labeled "copy."
- 4.1.4** If the bidder designates any information in its bid proposal as confidential. The bidder must also submit one (1) paper copy and one copy on CD marked "Public Copy" of the bid proposal from which confidential information has been excised, per Section 2.20. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.
- 4.1.5** Bid proposals must respond to RFP requirements by restating the number and text of the requirement in sequence and writing the response immediately after the restated requirement.
- 4.1.6** Bid proposals shall not contain broad marketing promotional or display materials.
- 4.1.7** Attachments shall be referenced in the bid proposal.
- 4.1.8** If a bidder proposes more than one method of meeting the requirements, each proposal should be labeled and submitted separately. Each proposal will be evaluated separately.

### **4.2 Technical Proposal**

The Technical Proposal shall consist of the following documents and responses in the order given below:

#### **4.2.1 Transmittal Letter**

The transmittal letter shall be signed by an individual authorized to legally bind the bidder. The letter shall include the postal mailing address, the electronic E-mail address, fax

number, and telephone number of the bidder's main and alternative contact person(s) regarding the proposal.

Any request for confidential treatment of information shall be included in the transmittal letter in addition to the specific statutory basis supporting the request and an explanation why disclosure of the information is not in the best interest of the public per Section 2.20. The transmittal letter shall also contain the name, address and telephone number of the individual authorized to respond to the Department about the confidential nature of the information.

The bidder shall acknowledge receipt of amendments and the Department's responses to questions submitted by the bidder in the transmittal letter. The Department however accepts no responsibility that all bidders shall have received any amendments.

#### **4.2.2 Requirements Checklist**

The bidder shall submit with the bid proposal the document included as Attachment 9 in which the bidder will check mandatory requirements it has attempted to meet and the location in their proposal. The Department will make the final determination, however, whether the bid proposal meets mandatory requirements.

#### **4.2.3 Table of Contents**

The bidder shall include a table of contents of its bid proposal.

#### **4.2.4 Executive Summary**

The bidder shall submit an executive summary that briefly reviews the strengths of the bidder and key features of its proposed approach to meet the requirements of this RFP.

#### **4.2.5 Background Information**

The bidder shall provide the following general background information:

- 4.2.5.1** Name, address, telephone number, fax number and e-mail address of the bidder including all doing business as or assumed names or other operating names of the bidder.
- 4.2.5.2** Form of business entity, i.e., corporation, partnership, proprietorship, Limited Liability Company.
- 4.2.5.3** State of incorporation, state of formation, or state of organization.
- 4.2.5.4** Identity and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the bidder's performance under the terms of this RFP.
- 4.2.5.5** Local office address and telephone number (if any).
- 4.2.5.6** Number of employees.
- 4.2.5.7** Type of business.
- 4.2.5.8** Name, address and telephone number of the bidder's representative to contact regarding all contractual and technical matters concerning this proposal.
- 4.2.5.9** Name, address and telephone number of the bidder's representative to contact regarding scheduling and other arrangements.
- 4.2.5.10** Identify the bidder's accounting firm.
- 4.2.5.11** State bidder's Federal Employer Identification Number (FEIN). The successful bidder will be required to register to do business in Iowa.

#### **4.2.6 Service Requirements**

The bidder shall address each service requirement in Section 3 and explain how it plans to approach each requirement. Bidders are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, examples, processes, and procedures. Bid proposals must be fully responsive to the service requirements in Section 3. Merely repeating the requirement will be considered non-responsive and disqualify the bidder. Bid proposals must identify any deviations from the requirements of this RFP the bidder cannot satisfy.

#### **4.2.7 Company Experience & Qualifications**

- 4.2.7.1** Experience and financial stability is important. Provide details of your business background, number of clients, total business revenues, number of years in business, and other information as necessary to provide assurance of your financial stability.
- 4.2.7.2** Document the number of years experience with providing the types of services sought by the RFP.
- 4.2.7.3** Describe the level of technical experience in providing the types of services sought by the RFP.
- 4.2.7.4** List all services similar to those sought by this RFP that the bidder has provided to other businesses or governmental entities.
- 4.2.7.5** Identify if the services were timely provided and within budget.
- 4.2.7.6** Provide letters of reference from three (3) previous clients knowledgeable of the bidder's performance in providing services similar to the services described in this RFP. Include full contract information including name, title, telephone and fax numbers plus email addresses for each reference.

#### **4.2.8 Personnel**

The bidder shall provide the following information regarding its personnel.

- 4.2.8.1** Provide a table of organization. Illustrate the lines of authority. Include the names and credentials of the owners and executives of your organization and, if applicable, their roles on this project. Also include key personnel who will be involved in providing services contemplated by this RFP.
- 4.2.8.2** Provide resumes for all key personnel, including the project manager, who will be involved in providing the services contemplated by this RFP. The resumes must include: name, education, and years of experience and employment history, particularly as it relates to the scope of services specified herein. It is expected that the key personnel presented in the vendor response to the RFP will be the team members involved in providing the services for transition to the new software system. Should changes be required THE STATE must approve the replacements.
- 4.2.8.3** Years of experience and employment history particularly as it relates to the scope of services specified here.

**4.2.8.4** Provide the name and qualifications of any subcontractor who will be involved with this project. Describe the work and estimate the percent of total work the subcontractor will be performing.

**4.2.8.5** Describe other contracts and projects currently undertaken by the bidder.

#### **4.2.9 Financial Information**

The bidder must provide the following financial information to demonstrate the bidder's long term viability to carry out the requirements of any contract with the State:

**4.2.9.1** Submit audited financial statements (annual reports) for the last three (3) years and/or bank statements, credit reports etc

**4.2.9.2** Provide a minimum of three (3) financial references.

#### **4.2.10 Termination, Litigation, and Investigation**

The bidder must provide the following information:

**4.2.10.1** During the last five (5) years, has the bidder had a contract for services terminated for any reason? If so, provide full details related to the termination.

**4.2.10.2** During the last five (5) years, describe any damages or penalties or anything of value traded or given up by the bidder under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP and the resulting Contract. If so, indicate the reason and the estimated cost of that incident to the bidder.

**4.2.10.3** During the last five (5) years, list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could affect the ability of the bidder to perform the required services. The bidder must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the bid proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a bid proposal, and with respect to the successful bidder after the execution of a contract, must be disclosed in a timely manner in a written statement to the Department.

**4.2.10.4** During the last five (5) years, have any irregularities been discovered in any of the accounts maintained by the bidder on behalf of others? If so, describe the circumstances of irregularities or variances and disposition of resolving the irregularities or variances.

#### **4.2.11 Acceptance of Terms and Conditions**

The bidder shall specifically stipulate that the bid proposal is predicated upon the acceptance of all terms and conditions stated in the RFP. If the bidder objects to any term or condition, specific reference to the RFP page, and section number must be made. Objections or responses that materially alter the RFP shall be deemed non-responsive and disqualify the bidder. Reference Section 6.

#### **4.2.12 Certifications**

The bidder shall sign and submit with the Technical Proposal the document included as Attachments 1 through 8.

#### **4.2.13 Firm Bid Proposal Terms**

The bidder shall guarantee in writing the availability of the services offered and that all bid proposal terms, including price, will remain firm a minimum of 180 days following the deadline for submitting proposals.

#### **4.3 Cost Proposal**

The bidder shall provide the Cost Proposal in format as shown in Attachment 10.

## Section 5 Evaluation of Bid Proposals

### 5.1 Introduction

This section describes the evaluation process that will be used to determine which bid proposal provides the greatest benefits to the Department. The Department will not necessarily award a contract to the bidder offering the lowest cost to the Department. Instead, the Department will award the contract to the compliant bidder whose proposal receives the most points in accordance with the evaluation criteria set forth in this section.

### 5.2 Mandatory Requirements for Bid Proposal

As part of its initial screening, all bid proposals will be assessed by the State to assure that the mandatory submittal requirements have been met. The State reserves the right to reject bid proposals that do not meet the mandatory requirements. Rejected bid proposals will be returned to bidders. A helpful bid proposal Requirements Checklist is provided in Attachment 9.

### 5.3 Evaluation Committee

The Department intends to conduct a comprehensive, fair and impartial evaluation of bid proposals received in response to this RFP. In making this determination, the Department will be represented by an Evaluation Committee.

### 5.4 Evaluation Process

The Department shall evaluate the contents of the Proposals fairly but at their discretion in the best interests of the State. To assist the Department in evaluating the proposals, proposals may be awarded points (1,000 points maximum) as follows. Sixty Percent (60%) of the maximum number of points available is derived from the Technical Response. The criteria used to evaluate the Technical Response is weighted to reflect the importance of the criteria in the evaluation. Forty Percent (40%) of the maximum number of points available is derived from the Cost Proposal. No prospective vendor is promised a minimum or maximum number of points.

#### **TECHNICAL RESPONSE EVALUATION CRITERIA ( 600 points available)**

Prospective Vendors will be evaluated on the requirements of this RFP and assign scores as follows:

Technical (non cost factors)	Possible Points
Previous experience in contracts similar in size and scope.	32
To what degree proposal exceeds all mandatory requirements.	49
Quality of 3 Client References.	32
After-sale warranties after-sale maintenance support.	114
Pre-sales Technical Assistance	97
Degree of acceptance of State's Contractual Terms and Conditions	65
Ability to track individual purchase orders / licenses on-line (via-web site). Process for tracking orders / licenses.	81
Response & Resolution time to trouble calls	130
<i>total:</i>	<i>600</i>



References will be utilized to verify information provided by prospective Vendors. In the sole discretion of the State, a prospective Vendor may be disqualified from further consideration if the Vendor provides false or misleading information in its proposal. A Proposal must receive at least 50% of the technical score (300 points) to be further considered.

### **COST EVALUATION CRITERIA (400 points available)**

Bidder shall submit discount rates in the format found in Attachment 10. Each category of product as outlined in the required cost proposal format will be weighted. The weighting of each category will be announced prior to the due date for proposals. To assist the Department in evaluating the proposals, Cost Proposals may be evaluated and points awarded as follows. The proposal with the best discounting and / or pricing based upon a market basket of products and services will receive all available points. The remaining proposals will receive an apportionment of points relative to the difference from the proposal with the best cost. To help determine the number of points to be awarded all other cost proposals, the cheapest bid will be used in all cases as the numerator. Each of the other bids will be used as the denominator. The percentage will then be multiplied by the maximum number of points and the resulting number will be the cost points awarded to other compliant vendors. Percentages and points will be rounded to the nearest whole value.

Example: For each product category:  
Vendor A quotes 35%. Vendor B quotes 45%. Vendor C quotes 65%.

Vendor C:  $\frac{65\%}{65\%} =$  receives 100% of available points on cost for that category.

Vendor B:  $\frac{45\%}{65\%} =$  receives 69% of available points on cost for that category.

Vendor A:  $\frac{35\%}{65\%} =$  receives 54% of available points on cost for that category.

The compliant prospective Vendor's Technical Points will be added to the Cost Points awarded to obtain the total points awarded for a proposal.

### **5.5 Confidentiality**

During the evaluation process all information concerning proposals submitted will remain confidential and will not be disclosed to anyone whose official duties do not require such knowledge.

### **5.6 Preferences**

In accordance with the provisions of Iowa Code § 73.1 a preference will be given to products and provisions grown and coal produced within the State of Iowa, when they are found in marketable quantities in the State and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states. Preferences required by applicable statute or rule shall also be applied, where appropriate.

## Section 6 Contract Terms and Conditions

### 6.1 Introduction

The Contract will be between the successful bidder and the State of Iowa. The Contract between the State and the successful bidder shall be a combination of the specifications, terms and conditions of the RFP, the offer of the bidder contained in the Bid Proposal, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the Department.

The contract terms contained in this RFP Section 6 and RFP Attachments 11, 12, and 13 are not intended to be a complete listing of all contract terms, but are provided only to enable bidders to better evaluate the costs associated with the RFP and the potential resulting contract. Bidders should plan on such terms being included in any contract awarded as a result of this RFP. All costs associated with complying with these requirements should be included in the bidder's cost proposal or any pricing quoted by the bidder.

**By submitting a Bid Proposal, each bidder acknowledges its acceptance of these terms and conditions without change, except as otherwise expressly stated in its Bid Proposal. If a bidder takes exception to any term or condition, specific reference to the RFP page and Section number must be made. In addition, the bidder must state the reason for the exception and set forth in the Bid Proposal the specific contract language it proposes to replace the provision. The Department reserves the right to accept or reject, in whole or in part, the proposed language. Exceptions that materially change the terms or conditions of the RFP may be deemed non-responsive by the Department (in its sole discretion), resulting in disqualification of the Bid Proposal.**

If a prospective Vendor takes exception to any of the terms and conditions and fails to include other or different terms and conditions in its proposal it may be grounds for the State, in its sole discretion, to declare the Vendor's proposal non-responsive and to reject the proposal from evaluation or from award. The terms and conditions as stated herein relate only to the this RFP, and do not extend to other contracts the Vendor may currently have or may have in the future with the State, nor do the terms and conditions as stated herein relate to any other State procurement which may be in process.

The Department reserves the right to either award a contract without further negotiation with the successful bidder or to negotiate contract terms with the selected bidder if the best interests of the Department would be served.

Any master contract(s) resulting from this RFP and entered into between the state and the successful vendor(s) as a result of this RFP, will serve as the overriding and controlling agreement between State Agencies and the Contractor. No conflicting provision(s) written into any individual agreements between an agency and the contractor against the Master Agreement will be considered valid and enforceable unless the Master Agreement specifically allows for it either by language allowing latitude on that provision, or by amendment.

Note: The degree of acceptance by bidders in their proposal of the State's Proposed Terms and Conditions as written herein will be an important evaluation criteria.

## **6.2 Incorporation of Documents**

The RFP, all amendments thereto and the Department's written responses to bidders' questions collectively form the RFP, and are hereinafter referred to as "RFP". The Contractor's Bid Proposal and any amendments collectively form the Bid Proposal and are hereinafter referred to as the "Bid Proposal". The RFP and the Bid Proposal are incorporated herein by reference. The parties are obligated to perform all services described in the Contract.

## **6.3 Order of Priority**

In the event of a conflict between the Contract, the RFP and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order:

- 1) The Contract;
- 2) The RFP;
- 3) The Bid Proposal.

## **6.4 Term of the Contract**

The State of Iowa intends to award a multi-year contract, not to exceed six (6) years. The effective date shall be the date both parties sign the agreement. The initial expiration date shall be three (3) years from date of execution, with options to renew on an annual basis.

## **6.5 Payment Terms and Compensation**

Bid Prices shall be FOB Destination, Des Moines, Iowa. Title and Risk shall not transfer until after delivery, testing, fully operational in a production mode, and the States acceptance. Bidder shall warrant software and hardware components free from defects and workmanship for a period of not less than one year after delivery and acceptance by the department. Invoices shall be due and payable after sixty (60) days after completion and acceptance of project. The State does not pay tax.

Except as agreed upon by the parties and incorporated herein, the Vendor shall not be reimbursed for any operating costs incurred by the Vendor, including but not limited to:

- 1) Workers Compensation costs or insurance premiums,
- 2) Unemployment compensation costs,
- 3) Taxes or other obligations of the Vendor associated with the provision of services requested,
- 4) All Expenses including Car rentals, airfare, meals, lodging, copies, postage, etc.

If the State in good faith determines that the Contractor has failed to perform or deliver any service or product as required by this Contract, the Contractor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the State may withhold that portion of the Contractor's compensation, which represents payment for service or product that was not performed or delivered.

The Department shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 (2003 Supp.) The Department may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514.

The Contractor shall promptly, but in all cases within thirty (30) days, pay to the Department the full amount of any erroneous payment or overpayment upon written notice of an erroneous payment or overpayment to which the Contractor is not entitled.

## 6.6 No Limitation of Vendor Liability

Except on death and personal injury damages, individual customers shall have latitude in negotiating limits on vendor liability based upon their specific risk assessment(s) with advice from legal counsel. Otherwise, any master contract(s) resulting from this RFP and entered into between the state and the successful vendor(s) should not contain any provisions that:

- (1) limit the liability of the successful vendor (or any approved subcontractor) for breach of contract, breach of warranty, misrepresentation, bad faith, fraud, indemnity, tort, negligence, gross negligence, death, personal injury, property damage, strict liability, or any other claim or cause of action;
- (2) limit the liability of the successful vendor (or any approved subcontractor) for any type of damages or loss, including, without limitation, consequential, indirect, incidental, special, and exemplary damages;
- (3) limit or cap the total liability of the successful vendor (e.g., a liability cap or ceiling equal to the value of the contract or a multiple thereof); (4) limit the rights or remedies of the state; or
- (5) disclaim any representations, warranties, conditions or guarantees, whether express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose, non-infringement, title and any warranties arising by statute or out of course of dealing, course of performance or usage of trade.

For further information regarding limitation of vendor liability visit:

<http://das.gse.iowa.gov/Limitations.pdf>.

The State of Iowa will consider and negotiate alternate provisions on Limitations on Vendor Liability in the Master Agreement, as presented in proposals submitted to this RFP, if the best interests of the State are served; however as previously noted, the degree of acceptance by bidders in their proposal of the State's Proposed Terms and Conditions as written herein will be an important evaluation criteria.

## 6.7 Bonding Requirements

If bonding is required by any agency for a specific engagement, the contractor shall post the bond in an amount equal to \_\_\_% [as mutually agreed] of the total value of the engagement's executed contract and provide a copy of the bond to the Board within ten (10) days after contract execution. Failure on the part of the contractor to furnish the bond in the time stated shall be cause for consideration by the State to void the award and terminate the contract. The contractor shall pay the cost of the bond, and not invoice the amount to the State.

In the event that the contractor or any subcontractor or any officer, director, employee, or agent of the contractor or any subcontractor or any parent or subsidiary corporation of the contractor or any subcontractor fails to fully and faithfully perform each material requirement of this contract, including without limitation the vendor's obligation to indemnify the State and pay damages to the State, the performance bond shall be forfeited to the State of Iowa.

The bond shall be in a form customarily used in the industry and that is acceptable to the State. The bond shall be written by a surety authorized to do business in Iowa and that is acceptable to the State. The bond shall be in effect at all times during the term of this contract and any extensions and for one (1) year following conclusion of the contract. The vendor warrants that it will maintain the required performance bond coverage as described herein without any lapse in

coverage. A lapse of the bond will be a material breach of the contract and shall be considered cause for the State to declare the vendor in default under this contract.

## **6.8 Pre-Qualification to do Business with the State**

Prior to execution of a contract with a successful Vendor, the successful Vendor must be qualified to do business with the State of Iowa by registering with

the Department of Administrative Services at

[http://das.gse.iowa.gov/procurement/vendor\\_reg.html](http://das.gse.iowa.gov/procurement/vendor_reg.html) and with

The Secretary of State at

<http://www.sos.state.ia.us/business/form.html> as applicable.

## **6.9 Accounting System Audit**

Prior to signing a specific service contract which exceeds \$150,000.00 and is other than a fixed bid deliverable contract, the Auditor of State may be required to provide certification stating that the contractor has an accounting system adequate to effect compliance with the terms and conditions of the contract. The contractor may be required to submit to an audit, if necessary, and shall pay for the audit. Ref: Iowa Code Section 11.36.

<http://www.legis.state.ia.us/IACODE/2003SUPPLEMENT/11/36.html>

## **6.10 Contract Exclusivity**

The contract shall NOT be an exclusive contract; but to facilitate future acquisitions of IBM OEM Hardware, Software, Accessories, and Services in lieu of an additional competitive selection processes by state agencies and political subdivisions (cities, counties, schools etc.) within the State of Iowa.

The contract shall NOT be a contract for unchecked sales of IBM products and services over \$5,000, in lieu of competitive selection where 1) competition clearly exists between IBM and other Original Equipment Manufacturers and other Publishers of otherwise equal products, and 2) where the agency has no justification for sole source procurement as defined in Administrative Rule 11- 105.4(5) viewable at: <http://www.legis.state.ia.us/Rules/Current/iac/11/11105/11105.pdf>, such as where the procurement is of such a specialized nature that only IBM by virtue of experience, expertise, or ownership of intellectual property rights can most satisfactorily provide the good or service; or where the procurement is for a device or service that is systems software or an upgrade, where compatibility is the overriding consideration, or the procurement would prevent voidance or termination of a warranty, or the procurement would prevent default under a contract or other obligation.

The contract will not be for general consulting, data processing or software development not directly associated with the standard commercially available IBM product line.

The awarded contract(s) will replace and supersede current contracts #CT2825MV with IBM and MSI; however, previously on-going current agreements made under #CT2825MV may continue under the provisions of #CT2825MV until the term of those previous agreements expire or are terminated.

The contract will have no effect on any other contracts such as Iowa WSCA Contract #A63311.

## **Attachments**

## **RFP ATTACHMENT 1**

### **PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION WITHIN TECHNICAL PROPOSAL**

#### **PROPOSAL CERTIFICATION**

I certify that I have the authority to bind the vendor indicated below to the specific terms, conditions and technical specifications required in the attached Request for Proposal 808005440 and offered in the vendor's proposal. I understand that by submitting this proposal, the vendor indicated below agrees to provide the services, which meet or exceed the requirements of the RFP unless noted in the proposal and at the prices quoted by the vendor.

I certify that the contents of the proposal are true and accurate and that the vendor has not knowingly made any false or misleading statements in the proposal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Name of Vendor Organization

## **RFP ATTACHMENT 2**

### **PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION WITHIN TECHNICAL PROPOSAL**

#### **CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF INTEREST**

By submission of a proposal in response to RFP 808005440, the vendor certifies (and in the case of a joint proposal, each party thereto certifies) that the proposal has been developed independently, without consultation, communication or agreement with any employee or consultant of the Department who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee; the proposal has been developed independently, without consultation, communication or agreement with any other vendors or parties for the purpose of restricting competition; unless otherwise required by law, the information in the proposal has not been knowingly disclosed by the vendor and will not knowingly be disclosed prior to the award of the contract, directly or indirectly, to any other vendor; no attempt has been made or will be made by the vendor to induce any other vendor to submit or not to submit a proposal for the purpose of restricting competition; no relationship exists or will exist during the contract period between the vendor and the Department that interferes with fair competition or is a conflict of interest.

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Name of Vendor Organization



### **RFP ATTACHMENT 3**

#### **PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION WITHIN TECHNICAL PROPOSAL**

#### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this Proposal in response to RFP 808005440, the vendor is providing the certification set out below:

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the vendor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The vendor shall provide immediate written notice to the person to which this Proposal is submitted if at any time the vendor learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principle, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
4. The vendor agrees by submitting this Proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The vendor further agrees by submitting this Proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. A participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized under paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(1) The vendor certifies, by submission of this Proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(2) Where the vendor is unable to certify to any of the statements in this certification, such vendor shall attach an explanation to this Proposal.

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Name of Vendor Organization

PAGE 2 OF 2

## **RFP ATTACHMENT 4**

### **PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION WITHIN TECHNICAL PROPOSAL**

#### **AUTHORIZATION TO RELEASE INFORMATION**

\_\_\_\_\_ (Name of vendor) hereby authorizes any person or entity, public or private, having any information concerning the vendor's background, including but not limited to its performance history regarding its prior rendering of services similar to those detailed in RFP 808005440, to release such information to the Department.

The vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the Department or may otherwise hurt its reputation or operations.

The vendor is willing to take that risk. The vendor agrees to release all persons, entities, the Department, and the State of Iowa from any liability whatsoever that may be incurred in releasing this information or using this information.

\_\_\_\_\_  
Printed Name of Vendor Organization

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

## RFP ATTACHMENT 5

### PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION WITHIN TECHNICAL PROPOSAL

#### **CERTIFICATION OF CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

I \_\_\_\_\_ (Print Name)

For \_\_\_\_\_ (Vendor)

acknowledge that in the performance of responsibilities under a contract my company may acquire or have access information regarding State of Iowa employees, clients and/or Iowa citizens and that such information is designated as “proprietary and confidential”.

I acknowledge that my company may be subject to significant Federal and State criminal and civil penalties if it misuses or improperly releases / discloses the confidential information it may acquire or have access to.

Therefore, my company agrees not to disclose or misuse such information except for purposes of performing under the contract. If there is doubt over confidentiality, we will regard it as confidential information. We further agree to adhere to any written procedures and policies with respect to the handling of confidential information.

I understand, acknowledge, and agree that this confidentiality and nondisclosure agreement remains in full force and effect after the conclusion, termination or expiration of the contract.

\_\_\_\_\_  
(Signature) Date: \_\_\_\_\_

## RFP ATTACHMENT 6

### PROSPECTIVE VENDORS – SIGN AND SUBMIT WITH TECHNICAL PROPOSAL.

#### **CERTIFICATION REGARDING REGISTRATION, COLLECTION, AND REMISSION OF STATE SALES AND USE TAX**

Pursuant to 2005 Iowa Acts SF 413 – which creates new Iowa Code subsections 423.2(9A) & 423.5(8) – a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under Iowa Code chapter 423 on all sales of tangible personal property and enumerated services. The Act also requires vendors to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

By submitting a proposal in response to Request for Proposal # 808005440, the undersigned certifies the following:  
(check the applicable box)

Our Company is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 432;

**OR**

Our Company is not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(42) & (43).

Our Company also acknowledges that the State of Iowa may declare our bid or resulting contract void if the above certification is false. Our Company also understands that fraudulent certification may result in the State of Iowa or its representative filing for damages for breach of contract.

---

Printed Name of Vendor Organization

---

Signature of Authorized Representative

---

Date

---

Printed Name and Title

## **RFP ATTACHMENT 7**

### **PROSPECTIVE VENDORS – SIGN AND SUBMIT WITH TECHNICAL PROPOSAL**

#### **CERTIFICATION OF AVAILABLE RESOURCES**

I certify that the bidder organization indicated below has sufficient personnel resources available to provide all services proposed by this Bid Proposal. I duly certify that these personnel resources for the contract awarded will be available.

\_\_\_\_\_  
NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
NAME OF VENDOR ORGANIZATION

## **RFP ATTACHMENT 8**

### **PROSPECTIVE VENDORS – SIGN AND SUBMIT CERTIFICATION WITH TECHNICAL PROPOSAL**

#### **CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

A. No federal appropriated funds have been paid or will be paid on behalf of the Sub-Grantee to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, an officer or employee of the Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant loan or cooperative agreement,

B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of the Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions,

C. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C.A. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Organization: \_\_\_\_\_

Date: \_\_\_\_\_

**RFP ATTACHMENT 9**  
**Requirements Check List**

RFP REFERENCE	RESPONSE INCLUDED		LOCATION OF RESPONSE
	Yes	No	
One Original & 5 copies of Technical Proposal			
One copy of above Technical Proposal on CD			
Separately Sealed Cost Proposal (Attachment 10)			
Public Copy of Technical Proposal (if any)			
One Copy of above Public Copy (if any) on CD			
4.2.1 Transmittal Letter			
4.2.3 Table of Contents			
4.2.4 Executive Summary			
4.2.5 Background Information			
4.2.6 Service Requirements			
3.2 Vendor Requirements:			
3.2 - 1 Three References			
3.2 - 2 Certified IBM Partner			
3.2 - 3 Complete family of IBM products			
3.2 - 4 Resumes of personnel			
3.2 - 5 Financials			
3.2 - 6 Corp Info			
3.2 - 7 Contact Info			
3.2 - 8 On-line ordering			
3.2 - 9 Enterprise Standards			
3.2 - 10 Mandatory Contract Conditions			
3.2 - 11 Inform of Offers			
3.2 - 12 Electronic Payments			
3.3 Hardware Requirements			
3.3a Discount off list pricing structure			
3.3b Warranted as new			
3.3c Substitutions			
3.3d Best price			
3.3e Web accessible catalog			
3.3f No cost options			
3.3g Full USA standard OEM warranty			



3.3h Extended maintenance			
3.4 Software Requirements			
3.4a Discount off list pricing structure			
3.4b Valid product licenses			
3.4c Educational materials			
3.4d Full USA OEM warranty			
3.4e Evaluation copies			
3.4f Extended maintenance			
3.4g & h VLAs / LPs			
3.5 Services Requirements			
3.5a associated services			
3.5b non-IBM related products or services			
3.5c System Integration			
3.5d No cost technical support			
3.5e Additional technical support			
3.5f sales assistance			
3.5g marketing plan			
3.5h extended maintenance service options			
3.6 Leasing Requirements			
3.6a, b & c Describe your leasing program			
3.6d Re: fair-market-value			
3.6e No lease/purchase			
3.7 Proposal Requirements			
3.7A Proposal Summary			
3.7B Work Plan			
3.7C Product Catalog and Pricing			
4.2.7 Company Experience & Qualifications			
4.2.8 Personnel			
4.2.9 Financial Information			
4.2.10 Termination, Litigation, and Investigation			
4.2.11 Acceptance of Terms and Conditions			
4.2.12 Certifications 1 through 8			
4.2.13 Firm Bid Proposal Terms			

**RFP ATTACHMENT 10**  
**Required Cost Proposal Format**

Contractor's Cost Proposal shall include an all-inclusive, itemized, total cost in U.S. Dollars (including all travel, expenses, etc. in prices). All pricing to be FOB Destination, freight cost and all expenses included (incl. travel, lodging and meals); and based on Net 60 Days Payment Terms. The following template is required. Please use additional pages to provide any additional narrative support for the costing information.

	<b>Discount on Products</b>	<b>Percent Discount Off Current Mfg Suggested Retail List Price</b>
1	Lotus	
2	Tivoli	
3	Web Sphere	
4	Rational	
5	Data Management	
6	System I Hardware	
7	System I Software	
8	System P Hardware	
9	System P Software	
10	System X Hardware	
11	System X Software	
12	System Z Hardware	
13	System Z Software	
14	Storage Hardware	
15	Storage Software	
	<b>Max Hourly Cost on Services</b>	<b>US Dollar Cost per Hour</b>
1	Principal/Executive Consultant:	
2	Project Manager:	
3	Business Systems Analyst:	
4	Architect:	
5	Database Administrator:	
6	Technology Specialist:	
7	Training Specialist:	
8	Change Management Specialist:	

Submitted by \_\_\_\_\_ Date : \_\_\_\_\_

Company: \_\_\_\_\_ City/State: \_\_\_\_\_

Bidder may list any special or optional products / services which you wish to offer and their pricing at the bottom of the cost proposal sheet. Clearly indicate these as 'optional' and indicate where in your Technical Proposal more information can be found.

## Attachment 11

### Proposed MASTER Service Contract (See also RFP Section 6)

This Agreement for professional services, hardware and other deliverables (this “Agreement”), effective as of [\_\_\_\_\_] (“Effective Date”), is made by and between the State of Iowa, acting by and through the \_\_\_\_\_ (“Department”) and \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_ (“Vendor”). The parties agree as follows:

#### SECTION 1. PURPOSE AND TERM.

**1.1 Purpose.** The parties have entered into this Agreement for the purpose of retaining Vendor to provide certain professional services and other Deliverables to Customers.

**1.2 Term.** The term of this Agreement is for three (3) years with 3 annual renewal options , unless terminated earlier in accordance with the terms of this Agreement. The initial term of this Agreement is from \_\_\_, 2008 to \_\_\_, 2011.

#### SECTION 2. DEFINITIONS.

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

**“Acceptance”** means that the Customer has determined that one or more Deliverables satisfy the Customer’s Acceptance Tests. Final Acceptance means that the Customer has determined that all Deliverables satisfy the Customer’s Acceptance Tests. Non-acceptance means that the Customer has determined that one or more Deliverables have not satisfied the Customer’s Acceptance Tests.

**“Acceptance Criteria”** means the Specifications, goals, performance measures, testing results and/or other criteria against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

**“Acceptance Tests” or “Acceptance Testing”** mean the tests, reviews and other activities that are performed by or on behalf of Customer to determine whether a Deliverable meets the Acceptance Criteria or otherwise satisfies the Customer, as determined by the Customer in its sole discretion.

**“Confidential Information”** means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by a Customer to the Vendor that, at the time of disclosure, is designated in writing or orally and confirmed in writing within thirty (30) days after disclosure by the Customer as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Vendor from a source other than the Customer prior to the time of disclosure of the information by the Customer to the Vendor and can be shown to be in the Vendor’s possession at the time of disclosure; (ii) was known to the Vendor prior to the disclosure of the information by the Customer and can be verified by the Vendor; (iii) was disclosed to the Vendor without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Vendor in violation of this Agreement or in breach of any other agreement with the Customer; (v) is independently developed by the Vendor without any reliance on Confidential Information disclosed by the Customer; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Vendor with the written consent of the Customer.

**“Customer”** means the State or a Governmental Entity that purchases or acquires services or other Deliverables under a Statement of Work or Purchase Order.

**“Deficiency”** means a defect, failure, or malfunction affecting a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable Specification or to operate according to the Documentation.

**“Deliverables”** means the Hardware, Software, Documentation, goods, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Vendor (or any agent, contractor or subcontractor of Vendor) as described in a Purchase Order or Statement of Work.

**“Documentation”** means any and all technical information, commentary, explanations, design documents, help files, database layouts, software code, methods, techniques, know-how, processes, algorithms, designs, data dictionaries, models, schematics, test or quality control materials, training materials, guides, user manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media, supplied by Vendor under a Statement of Work or a Purchase Order.

**“Governmental Entities” or “Governmental Entity”** means any governmental entity as defined in Iowa Code section 8A.101(4) or any successor provision to that section. Governmental Entity shall include any agency, department, board, authority, institution, establishment, division, bureau, commission, committee, council, examining boards, offices of any elective constitutional or statutory office, political subdivision, and any other entity or unit of government.

**“Project Completion Date”** means the date by which Vendor must complete all work and provide all Deliverables under a Statement of Work.

**“Purchase Order”** means a purchase order executed by a Customer to purchase any one or more Deliverables under this Agreement.

**“Schedule A”** means the attachment to this Agreement that contains the pricing for Deliverables to be provided under this Agreement.

**“Software License Agreement”** means a Software License Agreement in the form attached hereto as Schedule \_\_\_, between Vendor (or its Licensors) and a Customer pertaining to Software with respect to which a license and other rights are granted to such Customer.

**“Specifications”** mean all specifications, requirements, technical standards, performance standards, measures, representations and other criteria related to the Deliverables stated or expressed in this Agreement (including the Statement of Work and any other exhibits, schedules, appendices or other parts of this Agreement), and in any Documentation related to the Deliverables. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

**“State”** means the State of Iowa.

**“Statement of Work”** means a Statement of Work executed by a Customer and Vendor under this Agreement, which describes, among other things, the Deliverables and services to be provided by Vendor and the firm fixed price and the delivery dates associated therewith. A sample Statement of Work is attached to this Agreement as Schedule \_\_\_, and incorporated herein by this reference.

**“Third Party”** means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement or to any Statement of Work or Purchase Order executed in connection with this Agreement.

### **SECTION 3. DOCUMENTS INCORPORATED.**

**3.1 Incorporation.** The Department’s Request for Proposal No. \_\_\_\_ (“RFP”) and Vendor’s proposal in response to the RFP (“Proposal”), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of Vendor’s proposed revisions or modifications to any of the sample contracts attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein.

**.2 Contractual Obligations.** The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any proposed revisions or modifications proposed by Vendor to any sample contracts attached to the RFP shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or any Customer hereunder, unless expressly stated herein.

**3.3 Preference.** In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.

**3.4 No Inconsistency.** The references to the parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. Notwithstanding anything herein to the contrary, a Customer shall have only those obligations that are expressly stated in this Agreement or in any Statement of Work or Purchase Order executed by the Customer, and the Proposal does not create any express or implied obligations of the State, the Department, or any Customer.

## **SECTION 4. SCOPE OF WORK.**

**4.1 Statement of Work/Purchase Order.** Vendor shall provide a Customer with the Deliverables in accordance with the Statement of Work or Purchase Order executed by the Customer and Vendor and in accordance with all other terms and conditions of this Agreement.

**4.2 Amendments to Statement of Work / Purchase Order.** Any Statement of Work or Purchase Order may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of the parties to the Statement of Work or Purchase Order.

### **4.3 Delivery.**

**4.3.1** Vendor shall deliver to the Customer all Deliverables as set forth in the applicable Statement of Work or Purchase Order. Deliverables in the form of Documentation will be clear, concise, factual and complete. Vendor shall provide all such Deliverables in the format specified in the applicable Statement of Work or Purchase Order.

**4.3.2** Unless otherwise specified in a Statement of Work or Purchase Order, Vendor shall ship all Deliverables FOB Destination. Destination shall be the location(s) specified in the Statement of Work or Purchase Order. All deliveries are to be made only to the destination point specified on the Statement of Work or Purchase Order. If delivery is made to any other point, it shall be the responsibility of the Vendor to promptly reship to the correct location. Failure to deliver any goods on time may result in cancellation of an order or termination of a Statement of Work or Purchase Order at the option of the Customer.

**4.3.3** Quoted prices are to include all shipping and handling costs, FOB Destination, unloaded and moved to the final staging area by Vendor or Vendor's agent. All Deliverables shall be subject to the Customer's inspection on delivery. The title to goods and the risk of loss/damage transfers from Vendor to Customer only upon delivery to and acceptance by Customer, after Customer has had a reasonable opportunity to inspect. Notwithstanding the foregoing, hidden or latent damage will remain the responsibility of the Vendor to remedy without cost to the Customer, regardless of the when the hidden or latent damage is discovered. Notice of hidden or latent damage/deficiencies which would make items unsatisfactory for the purpose intended may be given by the Customer at any time after acceptance. The Vendor must remove at the Vendor's expense any item rejected by the Customer. If the Vendor fails to timely remove that rejected item, the Customer may dispose of the item by offering the same for sale, deduct any accrued expense and remit the balance to the Vendor.

**4.4 Hardware and Equipment.** Unless otherwise specified in a Purchase Order or Statement of Work, all hardware, goods, and equipment must be new and unused at the time of delivery. Vendors shall make no changes or substitutions of any Deliverable or component at any time during the term of this Agreement without the prior written approval of the Customer. VENDOR'S UNAUTHORIZED SUBSTITUTION OF DELIVERABLES OR COMPONENTS SHALL BE CONSIDERED A MATERIAL BREACH OF THIS AGREEMENT.

**4.5 Defective Deliverables.** All Deliverables provided or delivered by Vendor under this Agreement shall be free from any defects in design, material, or workmanship. If any Deliverables provided or delivered by the Vendor are found to be defective in material or workmanship, or do not conform to applicable Specifications or warranties, the Customer shall have the option of returning, repairing, or replacing the defective Deliverables at Vendor's expense. Customer's payment for any Deliverables shall not constitute Customer's Acceptance. Customer's payment or Acceptance shall not relieve the Vendor of its warranty obligations or any other obligation under this Agreement.

**4.6 Product Recalls.** In the event that any of the Deliverables are found by the Vendor, the Customer, or any Governmental Entity or court having jurisdiction to contain a Deficiency so as to require or make advisable that such Deliverables be reworked or recalled, the Vendor will promptly communicate all relevant facts to the Customer and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the Customer from taking such action as may be required of it under any such law or regulation. The Vendor shall perform all necessary repairs or modifications at its sole expense except to any extent that the Vendor and the Customer shall agree to the performance of such repairs by the Customer upon mutually acceptable terms.

## **SECTION 5. COMPENSATION AND ADDITIONAL RIGHTS AND REMEDIES.**

**5.1 Compensation.** In consideration of Vendor providing a Customer with all Deliverables in accordance with the terms and conditions of this Agreement and any applicable Statement of Work or Purchase Order, Vendor shall be entitled to receive from the applicable Customer the fees, amounts, or other compensation associated with such Deliverables as specified in the applicable Statement of Work or Purchase Order (provided that such fees, amounts, or other compensation will not exceed the prices specified in Schedule A), subject to all terms and conditions of this Agreement. A Customer shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement. Unless otherwise specified in a Statement of Work, all fees and compensation payable to Vendor are fixed, not-to-exceed amounts, and Vendor shall not be compensated on a time and materials basis. Vendor is not entitled to payment for any Deliverables provided under this Agreement if the Customer reasonably determines that any Deliverables or services have not been satisfactorily or completely delivered or performed, or that any Deliverable fails to meet, conform to, or operate in accordance with any applicable Specifications. No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement and any applicable Statement of Work or Purchase Order. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement unless permitted by applicable laws, rules, regulations and procedures and unless approved by Customer. The Department shall not be responsible for any payment obligations of any other Customer.

**5.2 Invoices.** Upon Vendor providing all Deliverables specified in a Statement of Work or Purchase Order to a Customer and fulfilling all of Vendor's obligations thereunder and under this Agreement, Vendor shall submit an invoice to the Customer requesting payment of the fees or other compensation specified in the applicable Statement of Work or Purchase Order. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the Customer. The Customer shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Customer may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514, as applicable. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514.

Notwithstanding anything herein to the contrary, the Customer shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Customer believes the invoice is inaccurate or incorrect in any way.

**5.3 Erroneous Payments and Credits.** Vendor shall promptly pay or refund to the Customer the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the Customer of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Customer under this section 5.3, the Customer may charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Customer may, in its sole discretion, elect to have Vendor apply any amounts due to the Customer under this Section 5.3 against any amounts payable by the Customer under this Agreement.

**5.4 Reimbursable Expenses.** There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.

**5.5 Set-off Against Sums Owed by Vendor.** In the event that Vendor owes the Customer or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Customer or the State may set off such sum against any sum invoiced to the Customer by Vendor in the Customer's or the State's sole discretion unless otherwise required by law. Any amounts due to a Customer or the State as damages may be deducted by the Customer or the State without a judgment or any court action from any money or sum payable by the Customer to Vendor pursuant to this Agreement or any other agreement between Vendor and the Customer.

**5.6 Withholding Payments.** In addition to pursuing any other remedy provided herein or by law, a Customer may withhold compensation or payments to Vendor, in whole or in part, without penalty to the Customer or work stoppage by Vendor, in the event the Customer determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement and/or the applicable Statement of Work or Purchase Order; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Customer under this Agreement.

**5.7 Monitoring and Review.** A Customer may monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring shall include the Customer's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

## **SECTION 6. ACCEPTANCE TESTS, PROJECT MANAGEMENT, KEY PERSONNEL AND LIQUIDATED DAMAGES.**

**6.1** Vendor shall commence and complete all work and provide all Deliverables to a Customer in accordance with the deadlines, timelines, terms, conditions, Specifications and other requirements specified in this Agreement, including those which may be specified in the Statement of Work or a Purchase Order. Vendor shall deliver, install and complete all services and provide all Deliverables no later than the Project Completion Date specified in a Statement of Work.

**6.2** Unless otherwise specified in a Statement of Work all Deliverables will be subject to Acceptance Testing and Acceptance by a Customer. Upon completion of all work to be performed by Vendor with respect to any Deliverable that is subject to Acceptance Testing, Vendor shall deliver a written notice to the Customer certifying that the Deliverable meets and conforms to applicable Specifications and is ready for Acceptance Testing. Within a reasonable period of time after the Customer has completed its Acceptance Testing, the Customer shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Customer determines that a Deliverable satisfies its Acceptance Tests, the Customer shall provide Vendor with notice of Acceptance with respect to such Deliverable. If the Customer determines that a Deliverable fails to satisfy its Acceptance Tests, the Customer shall provide Vendor with notice of Non-acceptance with respect to such

Deliverable. In the event the Customer provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to the Customer within ten (10) days of Vendor's receipt of notice of Non-acceptance so that the Customer may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Customer determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Vendor has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy its Acceptance Tests, then the Customer shall have the continuing right, at its sole option, to: (i) require Vendor to correct and repair such Deliverable within such period of time as the Customer may specify in a written notice to Vendor; (ii) refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable); (iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Customer's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Customer to correct such Deficiencies; or (iv) terminate this Agreement and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 10 of this Agreement, the Customer may terminate the applicable Statement of Work pursuant to this Section 6.2 without providing Vendor with any further notice or opportunity to cure. The Customer's right to exercise the foregoing rights and remedies, including termination of the Statement of Work, shall remain in effect until Acceptance Tests are successfully completed to the Customer's satisfaction and the Customer has provided Vendor with written notice of Final Acceptance. If the Customer determines that the Deliverables satisfy its Acceptance Tests, the Customer shall provide Vendor with notice of Final Acceptance with respect to such Deliverables. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Customer's rights to enforce the terms of this Agreement or require performance in the event Vendor breaches this Agreement or any Deficiency is later discovered with respect to such Deliverable(s).

### **6.3 Project Management and Reporting.**

**6.3.1 Project Manager.** Each Statement of Work shall identify Vendor's Project Manager. Vendor will assign a Project Manager of a management level sufficient to coordinate timely responses from project personnel, timely completion of tasks and achievement of milestones specified in the appropriate Statement of Work. Vendor confirms that its Project Manager will be qualified to perform the tasks required of that position under the appropriate Statement of Work. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement.

**6.3.2 Review Meetings.** Each Statement of Work shall specify the frequency of review meetings between the parties to discuss progress made by the Vendor in the performance of the applicable Statement of Work. Unless specified otherwise in the Statement of Work, at each review meeting, Vendor's Project Manager shall provide a status report, which includes, at a minimum, the information described in Section 6.3.3 and describes any problems or concerns encountered since the last meeting. At the next scheduled meeting after which any party has identified in writing a problem, the Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance under this Agreement.

**6.3.3 Reports.** Unless otherwise specified in the Statement of Work, Vendor shall provide the Customer with weekly status reports that describe, at a minimum, the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, proposed changes to the Statement of Work, any problems that may have arisen that need to be addressed before proceeding to the next week's activities, and any other information the Customer may request. Vendor's proposed format and level of detail for its status reports shall be in a format as mutually agreed between the parties.

**6.3.4 Problem Reporting Omissions.** The Customer's receipt of a report that identifies any problems shall not relieve Vendor of any obligation under the corresponding Statement of Work or waive any other remedy under this Agreement or at law or equity that the Customer may have. The Customer's failure to identify the extent of a



problem or Deficiency, or the extent of damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance under this Agreement.

**6.3.5 Change Order Procedure.** The parties to a Statement of Work may at any time mutually agree to a modification to the scope of that Statement of Work using a change order. The following procedures for a change order shall be followed.

**6.3.5.1 Written Request.** The Customer shall specify in writing the requested modification(s) to the Statement of Work with the same degree of specificity as in the original Statement of Work.

**6.3.5.2 Vendor's Response.** Vendor shall submit to the Customer a revised proposal for the requested modifications within fifteen (15) business days of receiving the Customer's change order request. Vendor agrees that there shall be no additional cost or Vendor compensation for or with respect to any change order requests for modifications, Deliverables, modules or functionality that are envisioned in, conceptually similar in nature to, or consistent with, the RFP or the Proposal.

**6.3.5.3 Effect of Change Order.** Both parties must sign and date the change order to authorize the change in Deliverables described therein and incorporated the changes into the Statement of Work and this Agreement. No services shall be performed pursuant to the change order and no payment shall be made on account of the change order until the change order is fully executed by both parties. Upon such execution, a change order shall alter only that portion of a Statement of Work to which it expressly relates and shall not otherwise affect the terms and conditions of this Agreement.

**6.4 Key Personnel.** The Statement of Work may identify Vendor personnel that are considered essential to the successful completion of the Statement of Work. Vendor shall not remove, reassign, transfer, or replace the individual(s) identified as key personnel in the Statement of Work except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of the Customer's written consent, which shall not be unreasonably withheld. If at any time during the term of the applicable Statement of Work, the Customer becomes dissatisfied with the performance of any individual who is part of Vendor's personnel working under the applicable Statement of Work, the Customer shall notify Vendor of the reasons for such dissatisfaction and may request replacement of such individual. Vendor will promptly investigate such request and the reasons for such dissatisfaction and report back to the Customer on the corrective action Vendor believes is appropriate to address the Customer's concerns and dissatisfaction. If the parties determine that such individual needs to be replaced, the replacement shall be effected within a mutually agreed upon time frame with a substitute individual having equal or greater ability, experience and qualifications than the departing individual.

**6.5 Security Regulation; Cooperation.** Vendor and Vendor's personnel shall comply with the Customer's and the State's security regulations including any procedure which the Customer's personnel, contractors and consultants are normally asked to follow. Vendor agrees to cooperate with and to provide any assistance reasonably necessary to the Customer in the investigation of any security breaches that may involve Vendor or Vendor's personnel.

## **SECTION 7. OWNERSHIP AND INTELLECTUAL PROPERTY.**

**7.1 Ownership of Vendor-Owned Deliverables.** Except as specifically granted or otherwise provided in this Agreement, Vendor shall own all Deliverables that were independently developed by Vendor prior to the Effective Date of this Agreement ("Vendor-Owned Deliverables").

**7.2 License to Vendor-Owned Deliverables.** Subject to the terms and conditions of this Agreement and any applicable Software License Agreement, Vendor hereby grants to the State and to each Customer a nonexclusive, irrevocable, perpetual, fully paid up, royalty-free, worldwide right and license to use, modify, and reproduce the Vendor-Owned Deliverables. The foregoing grant shall be in addition to any rights, licenses and privileges as may be granted in any applicable Software License Agreement between Vendor (or its licensors) and the State or any Customer. Vendor

agrees that neither Vendor nor any agent, affiliate or subcontractor of Vendor shall charge the State or any Customer any royalty, license fee, or similar charge for any Vendor-Owned Deliverable to be provided or made available under this Agreement or the Software License Agreement that was created or developed under a separate agreement using funds provided by the Federal Government whether through a cooperative agreement or otherwise.

**7.3 Ownership and Assignment of Other Deliverables.** To the extent any Statement of Work provides that a Customer will own any Deliverables specifically developed by Vendor for that Customer, Vendor hereby irrevocably assigns, transfers and conveys to such Customer all right, title and interest in and to such Deliverables, and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto (“Customer-Owned Deliverables”). The Vendor (and Vendor’s employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Customer-Owned Deliverables and shall not use any Customer-Owned Deliverables, in whole or in part, for any purpose, without the prior written consent of the Customer and the payment of such royalties or other compensation as the Customer deems appropriate.

**7.4 Waiver.** To the extent any of Vendor’s rights in any Customer-Owned Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Vendor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the Customer’s rights in and to the Customer-Owned Deliverables.

**7.5 Further Assurances.** At the Customer’s request, Vendor will execute and deliver such instruments and take such other action as may be reasonably requested by the Customer to establish, perfect or protect the Customer’s rights in and to the Customer-Owned Deliverables and to carry out the assignments, transfers and conveyances set forth in Section 7.3.

## **SECTION 8. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

**8.1** Vendor represents and warrants that each Deliverable shall: (i) be free from material Deficiencies; and (ii) meet, conform to, and operate in accordance with all Specifications and in accordance with this Agreement for one (1) year following the date of final completion or delivery of the Deliverable (whichever is later) (the “Warranty Period”). During the Warranty Period, Vendor shall, at its expense, repair, correct or replace any Deliverable (excluding Map Data) that contains or experiences material Deficiencies or fails to meet, conform to, or operate in accordance with Specifications promptly upon receiving notice of such Deficiencies or failures from the Customer. In the event Vendor is unable to repair, correct or replace such Deliverable to the Customer’s satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto.

**8.2** Vendor represents and warrants that it owns, possesses, holds, or has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Customer under a Statement of Work or Purchase Order and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Customer hereunder and under any applicable Software License Agreement without violating any rights of any Third Party.

**8.3** Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (ii) the Customer’s use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform each Customer in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, or the use of a Deliverable is enjoined, then

Vendor shall, at its sole expense: (i) procure for the Customer the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation. If none of the foregoing alternatives is practical or feasible, Vendor shall accept the return of the Deliverable at issue and refund to the Customer all fees, charges and any other amounts paid by the Customer with respect to such Deliverable. In addition, Vendor agrees to indemnify, defend, protect and hold harmless the Customer and the State and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement, including for any breach of the representations and warranties made by Vendor in this Section 8.4. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Customer and shall survive termination of this Agreement.

**8.4** Vendor represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms of the applicable Statement of Work, all applicable Specifications, and the standards of performance considered generally acceptable in the industry for similar tasks and projects.

**8.5** Vendor represents, warrants and covenants that it has complied with, and shall comply with, all applicable federal, state and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement.

**8.6** Vendor represents, warrants and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

**8.7** Vendor represents and warrants that the Deliverables will comply with any applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise.

**8.8** Vendor covenants that it will use all reasonable efforts to comply with and adhere to all Customer and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and that Vendor will take all precautions necessary to prevent unauthorized access to the Customer's and the State's systems, networks, computers, property, records, data, and information.

**8.9** Vendor represents and warrants it is not in arrears with respect to the payment of any monies due and owing the State or any agency or other Governmental Entity thereof, including but not limited to the payment of taxes and employee benefits, and it will not become so during the Term of this Agreement, or any extensions thereof.

**8.10** Vendor represents and warrants that any Deliverables purchased by Customer hereunder are free from all liens, security interests, pledges, mortgages, claims or encumbrances.

**8.11** Vendor represents, warrants and covenants to the Customer that the Deliverables provided under the Agreement are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget A-110 Appendix A and the Anti-Kickback Act of 1986.

## **SECTION 9. INDEMNIFICATION.**

**9.1** Vendor and its successors and permitted assigns shall defend, protect, indemnify and hold harmless each Customer, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:

**9.1.1** Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete; or

**9.1.2** Any act or omissions of Vendor, including, without limitation, any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors; or

**9.1.3** Vendor's performance or attempted performance of this Agreement; or

**9.1.4** Failure by Vendor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with any applicable local, state, and federal laws, rules, ordinances and regulations; or

**9.1.5** Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party.

**9.1.6** Any failure of the Deliverables to comply with applicable specifications, representations, warranties, or certifications under this Agreement.

**9.1.7** Claims, demands, or lawsuits that, with respect to the Deliverables or any portion thereof, allege product liability, strict liability, or any variation thereof.

**9.1.8** The negligence or fault of the Vendor in the design, testing, development, manufacture of the Deliverables or any portion thereof.

**9.2** Vendor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Customer or any other Indemnitee.

**9.3** The Customer will reasonably cooperate with Vendor to facilitate the defense of any action defended by Vendor. The Customer reserves the right to participate in the defense of any such action.

**9.4** Vendor shall be liable for any personal injury or damage to property caused by the fault or negligence of Vendor, its officers, directors, employees, agents and approved contractors or subcontractors.

## **SECTION 10. DEFAULT AND TERMINATION.**

**10.1 Termination by the Department or Customer.** The Department may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement or of any Statement of Work or Purchase Order, if such breach is not cured within the time period specified in the Department's notice of breach or any subsequent notice or correspondence delivered by the Department to Vendor, provided that cure is feasible. Any Customer may terminate a Statement of Work or Purchase Order upon written notice for the breach by Vendor of any term, condition, or provision of that Statement of Work or Purchase Order, or for any breach by Vendor of any term, condition, or provision of this Agreement, if such breach is not cured within the time period set forth in the Customer's notice of breach, provided that cure is feasible. In addition, the Department may terminate this Agreement (and any Customer may terminate any Statement of Work or Purchase Order) effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

**10.1.1** Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or misleading;

**10.1.2** Vendor or any of Vendor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

**10.1.3** Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;

**10.1.4** Vendor terminates or suspends its business;

**10.1.5** Vendor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited;

**10.1.6** Vendor has failed to comply with any applicable federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;

**10.1.7** The Department determines or believes the Vendor has engaged in conduct that has or may expose the Department or the State to material liability;

**10.1.8** Vendor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret; or

**10.1.9** Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

**10.1.9.1** Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

**10.1.9.2** Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

**10.1.9.3** Making an assignment for the benefit of creditors;

**10.1.9.4** Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement [or the Software License Agreement]; or

**10.1.9.5** Taking any action to authorize any of the foregoing.

The termination rights specified above shall be in addition to and not exclusive of other remedies available to the Department or a Customer, and the Department and each Customer shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

**10.2 Termination for Convenience.** Following thirty (30) days written notice, the Department may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor. Termination for convenience can be for any reason or no reason at all. Following thirty (30) days written notice, a Customer may terminate s Statement of Work or Purchase Order in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor. Termination for convenience can be for any reason or no reason at all.

**10.3 TERMINATION DUE TO LACK OF FUNDS OR CHANGE IN LAW. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, AND SUBJECT TO THE LIMITATIONS SET FORTH BELOW, THE DEPARTMENT MAY TERMINATE THIS AGREEMENT, AND ANY CUSTOMER MAY TERMINATE A STATEMENT OF WORK OR PURCHASE ORDER, WITHOUT PENALTY AND WITHOUT ANY ADVANCE NOTICE AS A RESULT OF ANY OF THE FOLLOWING:**

**10.3.1** The legislature or governor or any other governing body fail in the sole opinion of the Department or Customer to appropriate funds sufficient to allow the Department or Customer to either meet its obligations under this Agreement (or under any Statement of Work or Purchase Order) or to operate as required and to fulfill its obligations under the Agreement (or under any Statement of Work or Purchase Order); or

**10.3.2** If funds (including federal funds or grant funds) are de-appropriated, reduced, not allocated, unavailable, or receipt of funds is delayed, or if any funds or revenues needed by the Department or any Customer to make any payment hereunder (or under any Statement of Work or Purchase Order) are insufficient or unavailable for any other reason as determined by the Department or a Customer in its sole discretion; or

**10.3.3** If the Department's or a Customer's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

**10.3.4** If the Department's or a Customer's duties, programs or responsibilities are modified or materially altered; or

**10.3.5** If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Department's or a Customer's ability to fulfill any of its obligations under this Agreement.

The Department or Customer shall provide Vendor with written notice of any termination effected pursuant to this section.

**10.4 Limitation of Payment Obligations.** In the event of termination of this Agreement or of any Statement of Work or Purchase Order for any reason (except for termination pursuant to Section 10.1), the Customer shall pay only those amounts, if any, due and owing to Vendor for Deliverables delivered or provided (to Customer's reasonable satisfaction and in accordance with the terms of this Agreement and the applicable Statement of Work or Purchase Order) up to and including the date of termination and for which the Customer is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to the Department or any Customer and shall not be construed to require the Department or any Customer to pay: (i) any compensation or other amounts hereunder in the event of Vendor's breach of this Agreement (or of any Statement of Work or Purchase Order); or (ii) any amounts withheld by the Department or a Customer in accordance with the terms of this Agreement. The Department, the State and each Customer shall not be liable, under any circumstances, for any of the following:

**10.4.1** The payment of unemployment compensation to Vendor's employees;

**10.4.2** The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

**10.4.3** Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement;

**10.4.4** Any damages or other amounts for or relating to the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement;

**10.4.5** Any taxes Vendor may owe in connection with the performance of this Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

**10.5 Vendor's Termination Duties.** Upon receipt of notice of termination or upon request of the Department or a Customer, Vendor shall:

**10.5.1** Cease work under this Agreement or a Statement of Work and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed and such other matters as the Department or a Customer may reasonably require;

**10.5.2** Immediately cease using and return to the Customer any property, data, information, or materials, whether tangible or intangible, provided by the Customer to Vendor;

**10.5.3** Cooperate in good faith with the Department, the Customer and their employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider;

**10.5.4** Immediately return to the Customer any payments made by the Customer for services or Deliverables that were not rendered or provided by Vendor;

**10.5.5** Immediately deliver to the Customer any and all Deliverables for which the Customer has made payment that is in the possession or under the control of the Vendor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied at that time.

**10.6 TERMINATION FOR CAUSE BY VENDOR.** VENDOR MAY ONLY TERMINATE A STATEMENT OF WORK OR PURCHASE ORDER UPON WRITTEN NOTICE FOR THE BREACH BY THE CUSTOMER OF ANY MATERIAL TERM, CONDITION OR PROVISION OF SUCH STATEMENT OF WORK OR PURCHASE ORDER, IF SUCH BREACH IS NOT CURED WITHIN SIXTY (60) DAYS OF THE BREACHING CUSTOMER'S RECEIPT OF VENDOR'S WRITTEN NOTICE OF BREACH.

## **SECTION 11. INSURANCE.**

**11.1 INSURANCE POLICIES.** VENDOR SHALL, AT ITS SOLE EXPENSE, MAINTAIN IN FULL FORCE AND EFFECT, WITH INSURANCE COMPANIES ADMITTED TO DO BUSINESS IN THE STATE OF IOWA AND ACCEPTABLE TO THE DEPARTMENT, INSURANCE COVERING ITS WORK OF THE TYPE AND IN AMOUNTS REQUIRED BY THIS AGREEMENT. VENDOR'S INSURANCE SHALL, AMONG OTHER THINGS, INSURE AGAINST ANY LOSS OR DAMAGE RESULTING FROM OR RELATED TO VENDOR'S PERFORMANCE OF THIS AGREEMENT REGARDLESS OF THE DATE THE CLAIM IS FILED OR EXPIRATION OF THE POLICY. ALL INSURANCE POLICIES REQUIRED BY THIS AGREEMENT SHALL: (I) BE SUBJECT TO THE APPROVAL OF THE DEPARTMENT; (II) REMAIN IN FULL FORCE AND EFFECT FOR THE ENTIRE TERM OF THIS AGREEMENT; AND (III) NOT BE CANCELED, REDUCED OR CHANGED WITHOUT THE DEPARTMENT'S PRIOR WRITTEN CONSENT. THE STATE OF IOWA AND THE IOWA DEPARTMENT OF \_\_\_\_\_, ACTING ON BEHALF OF CUSTOMERS, SHALL BE NAMED AS ADDITIONAL INSURED ON ALL SUCH POLICIES, AND ALL SUCH POLICIES SHALL INCLUDE THE FOLLOWING ENDORSEMENT: "IT IS HEREBY AGREED AND UNDERSTOOD THAT THE STATE OF IOWA AND THE IOWA DEPARTMENT OF \_\_\_\_\_ ARE NAMED AS ADDITIONAL INSURED, AND THAT THE COVERAGE AFFORDED TO THE STATE OF IOWA AND THE IOWA DEPARTMENT OF \_\_\_\_\_ UNDER THIS POLICY SHALL BE PRIMARY INSURANCE. IF THE STATE OF IOWA OR THE IOWA DEPARTMENT OF \_\_\_\_\_ HAS OTHER INSURANCE WHICH IS APPLICABLE TO A LOSS, SUCH OTHER INSURANCE SHALL BE ON AN EXCESS, SECONDARY OR CONTINGENT BASIS. THE AMOUNT OF THE INSURER'S LIABILITY UNDER THIS POLICY SHALL NOT BE REDUCED BY THE EXISTENCE OF SUCH OTHER INSURANCE."

UNLESS OTHERWISE REQUESTED BY THE DEPARTMENT, VENDOR SHALL CAUSE TO BE ISSUED INSURANCE POLICIES WITH THE COVERAGES SET FORTH BELOW:

Type of Insurance	LIMIT	AMOUNT
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$5 million
	Products –	
	Comp/Op Aggregate	\$1 million
	Personal injury	\$1 million
	Each Occurrence	\$1 million
Excess Liability, umbrella form	Each Occurrence	\$1 million
	Aggregate	\$2 million
Errors and Omissions Insurance	Each Occurrence	\$2 million
Property Damage	Each Occurrence	\$1 million
	Aggregate	\$2 million
Workers Compensation and Employer Liability	As Required by Iowa law	

**11.2 Claims Provision.** All insurance policies required by this Agreement must provide coverage on an “occurrence basis” for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

**11.3 Certificates of Coverage.** At the time of execution of this Agreement, Vendor shall deliver to the Department certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Vendor starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Vendor related to this Agreement, certifying that the State of Iowa and the Department are named as additional insureds on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Department. All certificates of insurance shall be subject to approval by the Department.

**11.4 Liability of Vendor.** Acceptance of the insurance certificates by the Department shall not act to relieve Vendor of any obligation under this Agreement. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement. Vendor shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Vendor shall have no claim or other recourse against the State or the Department for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Vendor. Notwithstanding any other provision of this Agreement, Vendor shall be fully responsible and liable for meeting and fulfilling all of its obligations under Section 11 of this Agreement.

**11.5 Waiver of Subrogation Rights.** Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Department or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Department.

**11.6 Filing of Claims.** In the event either the Department, the State, or any Customer, suffers a loss and is unable to file a claim under any policy of insurance required under this Agreement, the Vendor shall, at the Department’s or Customer’s request, immediately file a proper claim under such policy. Vendor will provide the Department or the Customer with proof of filing of any such claim and keep the Department and Customer fully informed about the status of the claim. In addition, Vendor agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the Department and the Customer. Vendor shall pay to the Department and the Customer any insurance proceeds or payments it receives in connection with any such claim immediately upon Vendor’s receipt of such proceeds or payments.

**11.7 Proceeds.** In the event the Department, the State, or any Customer, suffers a loss that may be covered under any of the insurance policies required under this Section 11, neither the Vendor nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Department, the State, and the Customer, have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Vendor hereby assigns to the Department, the State, and to any Customer



suffering a loss, all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Agreement.

## **SECTION 12. CONTRACT ADMINISTRATION.**

**12.1 Independent Contractor.** Vendor is an independent contractor performing services for the Customer. Vendor shall not hold itself out as an employee or agent of the State, the Department, or any Customer. The Customer shall not provide Vendor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State, County or local employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and its staff shall not be considered employees of the Department, the State, or any Customer for any purpose, including for federal or State tax purposes. No taxes will be withheld on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

### **12.2 COMPLIANCE WITH THE LAW AND REGULATIONS.**

**12.2.1** Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to Vendor's performance of this Agreement.

**12.2.2** Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to the fulfillment or performance of this Agreement.

**12.2.3** The Department or any Customer may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement or of any Statement of Work.

**12.3 Confidentiality.** Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by a Customer or the State ("Customer Property") to the extent necessary to carry out its responsibilities under the Agreement. Such Customer Property shall at all times remain the property of the Customer and/or the State. Vendor shall preserve the confidentiality of Customer Property disclosed or furnished by the Customer to Vendor and shall maintain procedures for safeguarding such property. Vendor must designate one individual who shall remain the responsible authority in charge of all Customer Property collected, used, or disseminated by Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors may be required by the Customer to execute confidentiality or non-disclosure agreements to obtain access to certain Customer Property. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose, publish, reproduce, disseminate or otherwise use any Customer Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by the Customer to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Vendor agrees to return any and all Customer Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of

the Customer. In the event that Vendor receives a request for access to any Customer Property, Vendor shall immediately communicate such request to the Customer for consideration and handling.

Vendor shall indemnify the Department, the State, the Customer and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, the Department may terminate this Agreement (and any Customer may terminate a Statement of Work or Purchase Order) immediately without notice of default and opportunity to cure. Vendor acknowledges that the disclosure of any Confidential Information will immediately give rise to continuing irreparable injury to the Customer and/or the State and others that is inadequately compensable in damages at law. Accordingly, and without prejudice to any other remedy available to the Customer and/or the State, the Customer and/or the State will be entitled to injunctive relief. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

**12.4 Amendments.** This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement in order for the amendment to become effective.

**12.5 Third Party Rights.** No person other than the parties hereto, Customers, and their respective successors and permitted assigns, may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Department, the State, Customers, and the Vendor.

#### **12.6 Choice of Law and Forum.**

**12.6.1** This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof.

**12.6.2** Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise.

**12.6.3** This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Department, the State, or any Customer, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise.

**12.6.4** Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent. The Vendor appoints [name] at [ address ] Des Moines, Iowa, as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Department. Nothing in this provision will alter the right of the Department to serve process in any other manner permitted by law.

**12.6.5** This Section 12.6 shall survive termination of this Agreement.

**12.7 Assignment and Delegation.** This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Department may assign this Agreement to any State agency or unit of State government that succeeds the Department's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Department to which the Deliverables relate. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the Department.

**12.8 Use of Subcontractors/Third Parties.** None of the services to be provided by Vendor pursuant to a Statement of Work shall be subcontracted or delegated to any Third Party without the prior written consent of the Customer. The Customer's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Customer, whether financial or otherwise. Any subcontract to which the Customer has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement or any Statement of Work. All subcontracts shall be subject to the terms and conditions of this Agreement and to the applicable Statement of Work. Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify, defend and hold harmless the Department, the State, and each Customer, from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any subcontractor. All subcontracts shall contain provisions for the Customer to access the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

**12.9 Integration.** This Agreement represents the entire Agreement between the parties concerning the subject matter hereof, and neither party is relying on any representation that may have been made which is not included in this Agreement. The Department and all Customers shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, or "sneak-wrap" agreement (or any other similar agreement) that may accompany or relate to a Deliverable.

**12.10 Obligation Beyond Agreement Term.** This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4.1, 5.1 - 5.4, 5.6 - 5.9, 7.1-7.7, 8.1 - 8.13, 9.1 - 9.4, 10.4 - 10.6, 11.1-11.6, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.16, 12.18, 12.19, 12.24, 12.25, 12.28, 12.30, 12.32, 12.33, and 12.37 - 12.40 shall survive termination of this Agreement. [To be reviewed and revised by the parties prior to execution]

**12.11 Supersedes Former Agreements.** This Agreement supersedes all prior Agreements between the Department and Vendor for the Deliverables provided in connection with this Agreement.

**12.12 Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Department (or a Customer) and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

### **12.13 Notices.**

**12.13.1 Notices.** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail, return receipt requested, with postage prepaid thereon, or by recognized overnight delivery service, such as Federal Express or UPS:

If to the Department:	
If to Vendor:	
If to Customer:	Contact and Address as set forth in the Statement of Work or Purchase Order

**12.13.2** Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

**12.13.3** From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**12.14 Cumulative Rights.** The various rights, powers, options, elections and remedies provided in this Agreement shall be construed as cumulative, and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed by law, and shall in no way affect or impair the right of any party to pursue any other contractual, equitable or legal remedy to which it may be entitled. The election by any party of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

**12.15 Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

**12.16 Time is of the Essence.** Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all personnel providing services to the Customer are responsive to the Customer's requirements and requests in all respects.

**12.17 Authorization.** Vendor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

**12.18 Successors in Interest.** All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

**12.19 Records Retention and Access.** Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section.

**12.20 Headings or Captions and Terms.** The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be

followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

**12.21 Multiple Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

**12.22 Not a Joint Venture.** Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

**12.23 Additional Provisions.** The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

**12.24 Further Assurances and Corrective Instruments.** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

**12.25 Obligations of Joint Entities.** If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

#### **12.26 Force Majeure.**

**12.26.1** Neither Vendor nor any Customer shall be liable to the other for any delay or failure of performance of this Agreement or any Statement of Work, and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure" and not as a result of the fault or negligence of a party.

**12.26.2** As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other similar catastrophic events which are beyond the control and anticipation of the party affected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force Majeure" does not include financial difficulties of Vendor or any parent, subsidiary, affiliated or associated company of Vendor or claims or court orders that restrict Vendor's ability to deliver the goods or services contemplated by this Agreement.

**12.26.3** If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance.

**12.27 Material Breaches.** The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

**12.28 Right of Inspection.** Vendor shall allow the Customer, or anyone designated by the Customer, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

**12.29 Taxes.** Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Department and the State are exempt from the payment of State sales and other taxes.

**12.30 Title to Property.** Title to all property furnished by the Customer and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of the Customer and/or the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Customer upon the earliest of completion, termination, or cancellation of this Agreement or at the Customer's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it,

selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise.

**12.31 Exclusivity.** This Agreement is not exclusive. During the term of this Agreement, any Customer may obtain similar services from other service providers.

**12.32 Award of Related Agreements.** The Department or any Customer may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate reasonably with other contractors, consultants and other persons who may be engaged by the Department or the Customer in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by the Customer will abide by this provision.

**12.33 Sovereign Immunity.** The Department, each Customer, and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

**12.34 Disclaimer.** All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Department at the time the above-cited documents were prepared. The Department does not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

**12.35 Contract Compliance Audit.** Vendor agrees that the Department or a representative of its selection may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or expiration of this Agreement to determine whether or not the Vendor is complying with the terms of this Agreement, criteria established for access to Department Property, State and federal laws regarding Confidential Information, and any other applicable laws and regulations. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by the Department or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

**12.36 Care of Property.** Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and Customer Property furnished by the Customer for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the Customer's request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Vendor shall obtain the prior advance written approval from the Customer prior to Vendor's use (in advertising, publicity, public contract bidding, or otherwise) of the name, marks or intellectual property rights of the Customer or the State.

**12.37 Notification of Events.** Vendor shall notify the Department in writing if any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

**12.37.1** Vendor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or

**12.37.2** Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

**12.37.3** Making an assignment for the benefit of creditors; or

**12.37.4** Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement; or

**12.37.5** An order is entered approving an involuntary petition to reorganize the business of Vendor for all or part of its property; or

**12.37.6** If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Vendor is issued by any court or administrative agency against all or any material portion of Vendor's property; or

**12.37.7** Taking any action to authorize any of the foregoing.

**12.38 Vendor's Certification Regarding Suspension and Debarment.** Vendor certifies pursuant to 31 C.F.R. part 19 that neither it nor its principles are presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency. Vendor further agrees to comply with the regulations implementing executive order 12549 regarding debarment and suspension.

**12.39 Vendor's Certification Regarding Lobbying.** Vendor certifies that:

**12.39.1** No Federal appropriated funds have been paid or will be paid, by or on behalf of the Vendor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

**12.39.2** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any Federal contract, grant, loan, or cooperative agreement, the Vendor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

**12.39.3** Vendor shall require that the language of this section be included in the award documents for all subawards at all levels (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly;

**12.39.4** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code of Federal Regulations. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**12.40 Vendor's Certification Regarding Brokering.** Vendor certifies that no person or selling agency has been employed or retained to solicit and secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingency excepting bona fide employees or selling agents maintained by the Vendor for the purpose of securing business. For breach or violation of this certification, the Department shall have the right to terminate this contract without liability, or in its discretion, to deduct from the contract price or to otherwise recover the full amount of such commission, percentage, brokerage, or contingency.

**12.41 Vendor's Certification Regarding a Drug Free Workplace.** Vendor shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations. Vendor is required to report any conviction of employees under a criminal drug statute for violations occurring on the Vendor's premises or off the Vendor's premises while conducting official business. A report of a conviction shall be made to the Department within five (5) working days after the conviction.

**12.42 Certification Regarding Sales and Use Tax.** By executing this Agreement the Vendor certifies it is either (a) registered with the Iowa Department of Revenue and collects, and remits Iowa sales and use taxes as required by the Iowa Code chapter 432; or (b) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code subsections 423.1(42) & (43). The Vendor also acknowledges that the Department may declare this Agreement void if the above certification is false. The Vendor also understands that fraudulent certification may result in the State or its representative filing for damages for breach of contract.

**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

[Department]

[Vendor]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SCHEDULE A  
STATEMENT OF WORK AND PRICES

SCHEDULE B  
PROJECT PLAN

SCHEDULE C  
PERFORMANCE STANDARDS



## RFP Attachment 12

### Proposed MASTER Software License Agreement (See also RFP Section 6)

This Software License Agreement (the “Agreement”) is effective as of [ ] (“Effective Date”), and is made by and between \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_ (“Licensor”), and the State of Iowa, acting by and through \_\_\_\_\_ [name of customer/agency] (“Licensee”).

#### SECTION 1. DEFINITIONS.

In addition to any other terms that may be defined elsewhere in this Agreement, the following terms shall have the following meanings:

**“Authorized Contractors”** mean independent contractors, consultants or other Third Parties who are retained or hired by Licensee or a Governmental Entity to maintain, modify, support or enhance the Software or to otherwise assist Licensee or a Governmental Entity with its use of the Software.

**“Confidential Information”** means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential information or trade secrets disclosed by Licensor to Licensee that, at the time of disclosure, is marked or designated as confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the Licensee from a source other than the Licensor prior to the time of disclosure of the information by the Licensor to the Licensee; (ii) was known by the Licensee prior to the disclosure of the information by the Licensor; (iii) was disclosed to the Licensee without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the Licensee in violation of this Agreement or in breach of any other agreement with the Licensor; (v) is independently developed by the Licensee without any reliance on Confidential Information disclosed by the Licensor; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the Licensee with the written consent of the Licensor.

**“Customer”** shall have the meaning ascribed to it in the Services Contract.

**“Deficiency”** means a defect, failure, error, malfunction or other problem of any nature whatsoever with respect to the Software, including, without limitation, any failure of the Software to conform to an applicable Specification or to operate according to Documentation.

**“Documentation”** means any and all technical information, commentary, explanations, design documents, help files, database layouts, software code, test or quality control materials, training materials, guides, user manuals, worksheets, notes, work papers, methods, techniques, know-how, processes, algorithms, data dictionaries, schematics, and all other information, documentation and materials related to or used in conjunction with the Software, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media, supplied by Licensor.

**“Enhancements”** means all updates, upgrades, patches, additions, hot fixes, modifications or other enhancements to the Software provided or made available by Licensor or any Third Party, any new releases of Software, and all changes to the Documentation as a result of such Enhancements.

**“Governmental Entity” or “Governmental Entities”** means any governmental entity as defined in Iowa Code section 8A.101(4) or any successor provision to that section. Governmental Entity shall include any agency, department, board, authority, institution, establishment, division, bureau, commission, committee, council, examining boards, offices of any elective constitutional or statutory office, political subdivision, and any other entity or unit of government. [Identify any specific state agencies that will require license rights to use the Software.]

**“Services Contract”** means the Services Contract by and between the State of Iowa, acting by and through the Iowa

Department of Administrative Services, dated effective as \_\_\_\_\_, 2007.

**“Software”** means the software, programs and/or applications described in Schedule A, including all related modules, dynamic link libraries (DLLs), underlying organization, object model, components, extensions, Source Code, object code, executable code, Documentation, and Enhancements, and all copies of the foregoing.

**“Source Code”** means the human-readable source code, source program, scripts and/or programming language, including HTML, XML, XHTML, Visual Basic, and JAVA, for or related to the Software. Source Code includes all source code listings, instructions (including compile instructions), programmer’s notes, commentary and all related technical information and Documentation, including all such information and Documentation that is necessary or useful for purposes of maintaining, repairing, duplicating, compiling, or making modifications or enhancements to the Software and the Source Code.

**“Specifications”** mean all specifications, requirements, technical standards, performance standards, measures, representations and other criteria related to the Software stated or expressed in this Agreement, [the Services Contract (including any Statement or Work or Purchase Order issued thereunder)], and the Documentation.

**“State”** means the State of Iowa.

**“Third Party”** means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to either this Agreement or any Purchase Order or Statement of Work.

**“User”** means any Third Party that is authorized or permitted by the Licensee or a Governmental Entity to access or use the Software and its functions.

[All other capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Services Contract.]

## **SECTION 2. SOFTWARE LICENSE.**

**2.1 License.** Licensor hereby grants to Licensee and to Governmental Entities a nonexclusive, irrevocable, perpetual, fully paid up (except if the product is licensed on an annual basis or is a subscription-type product), royalty-free, world wide right and license to:

**2.1.1** Use, install, access, execute, host, copy, modify, maintain, support, enhance, demonstrate, configure, format, and test the Software, and prepare derivative works based on the Software, in all media now known or hereafter created;

**2.1.2** Grant any or all of the rights set forth/granted herein to Authorized Contractors, provided the Authorized Contractor is using or accessing the Software, Data, Web Services, or Documentation only for the benefit of the Licensee or a Governmental Entity;

**2.1.3** Combine and use the Software with other software, firmware, and hardware;

**2.1.4** Grant rights to access and use the Software and its functions to Users; and

**2.1.5** [Describe any other rights needed by the Agency/Licensee.]

All Software subject to this Agreement may be installed and used on any one or more of the Licensee’s or any Governmental Entity’s computers, data center locations, networks, electronic storage devices, Internet or intranet sites, servers or other systems (“Licensee Systems”).

## **2.2 Uses Not Permitted.**

**2.2.1** Except as otherwise provided herein, Licensee shall not sell, rent, lease, sublicense, or time-share the Software;

**2.2.2** Licensee shall not redistribute the Software to Third Parties (excluding Governmental Entities, Users or Authorized Contractors) in whole or in part, without the prior written approval of Lessor;

**2.2.3** Licensee shall not reverse engineer, decompile, or disassemble the Software, except to the extent that such activity is permitted by applicable law or by the Documentation notwithstanding this restriction;

**2.2.4** Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measure(s) that controls access to, or use of, the Software;

**2.2.5** Licensee shall not use the Software to transfer or exchange any material where such transfer or exchange is prohibited by applicable laws;

**2.2.6** Licensee shall not remove or obscure any of Licensor's patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Software.

**2.3 Source Code.** Licensor shall furnish and deliver to Licensee a complete copy of all Source Code (on a media and in an electronic format acceptable to Licensee) and updated Documentation (including any written information necessary or desirable for the maintenance, modification, compilation, and/or enhancement of the Software) for the most current version of all Software provided to Licensee hereunder: (i) upon delivery of the Software to Licensee [or, within x days of execution of this Agreement], (ii) when Licensor delivers or furnishes any Enhancement to Licensee under this Agreement or any maintenance or support agreement related to the Software, and (iii) upon Licensee's written request.

### **SECTION 3. TERM.**

The license to use the Software is effective upon execution of this Agreement and shall continue until: (i) such time that Licensee elects in writing to discontinue use of the Software and terminates the license; (ii) expiration of a term license or subscription; or (iii) Licensor terminates the license in accordance with Section 7.1 for a material breach that is not cured within the cure period specified herein.

### **SECTION 4. LICENSEE NOT REQUIRED TO ACCEPT OR INSTALL ENHANCEMENTS.**

Licensor shall not condition any of the Licensee's rights and remedies, or the Licensor's obligations, under this Agreement or any other agreement related to the Software, on the Licensee accepting or installing any Enhancements or additional functionality provided by Licensor.

### **SECTION 5. COMPENSATION.**

**5.1 License Fee.** In consideration of the grant of the perpetual license (where applicable) and all other rights granted to Licensee and Governmental Entities under this Agreement, Licensor shall be entitled to receive the licensee fee specified in Schedule A. Such amount, when paid, shall be deemed a fully paid-up license fee (unless a term license or subscription-type license is being acquired), and Licensee and Governmental Entities shall not be required to pay any additional license fees, expenses, costs, charges or other amounts. [Invoicing and payment will be handled in accordance with Section 5.2 of the Services Contract.]

**5.2 Set Off.** In the event that Licensor owes the Licensee or the State any sum under the terms of this Agreement, the Services Contract, or any other agreement, pursuant to a judgment, or pursuant to any law, the Licensee or the State may set off such sum against any sum invoiced to the Licensee in its sole discretion unless otherwise required by law. Amounts due to the Licensee or State as damages awarded by a court, an Administrative Law Judge or any other similar entity may be deducted by the Licensee or the State without a judgment or any court action from any money or sum payable by the Licensee to Licensor pursuant to this Agreement or any other agreement between Licensor and the Licensee or the State.

**5.3 Withholding.** In addition to pursuing any other remedy provided herein or by law, the Licensee may withhold compensation or payments to Licensor, in whole or in part, without penalty to Licensee or work stoppage by Licensor, in the event: (i) Licensor fails to provide Software or correct any Deficiencies with respect to any Software to Licensee's satisfaction; (ii) Licensor fails to perform any of its other obligations as set forth in this Agreement and/or the Services Contract; or (iii) the Software or any portion thereof fails to meet or conform to, or operate in accordance with any

applicable Specifications or Documentation. No interest shall accrue or be paid to Licensor on any compensation or other amounts withheld pursuant to this Section 5.3.

## **SECTION 6. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

**6.1** Licensor represents and warrants that the Software (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to, and operate in accordance with, all Specifications and Documentation for one (1) year following the date the Software is delivered to and received by Licensee (the “Warranty Period”). Licensor represents and warrants that all media containing or relating to the Software furnished hereunder shall be free from defects in material and workmanship under normal use and service. During the Warranty Period, Licensor shall, at Licensee’s request and at Licensor’s expense, repair, correct or replace any Software that fails to comply with the warranties and requirements of this Section 6.1 promptly upon receiving notice of such failure from Licensee. In the event Licensor is unable to repair, correct or replace such Software to Licensee’s satisfaction, Vendor shall refund the license fees paid for such Software within ten (10) business days after Licensee’s request for such refund. The foregoing shall not constitute an exclusive remedy under this Agreement, and Licensee shall be entitled to pursue any other available contractual, legal or equitable remedies.

**6.2** Licensor represents and warrants that it owns the Software and all intellectual property rights embodied therein or related thereto, or possesses, holds, or it has received all rights, permits, permissions, licenses and authority necessary to provide all Software to Licensee hereunder and to grant or convey the benefits, licenses and other rights granted or conveyed to Licensee and Governmental Entities hereunder without violating any rights of any Third Party.

**6.3** Licensor represents and warrants that: (i) the Software (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to, the software); (ii) Licensee’s (and any Governmental Entity’s) use of the Software in accordance with the terms of this Agreement; and (iii) Licensee’s (and any Governmental Entity’s) exercise of the rights, licenses and benefits granted or conveyed hereunder, do not and will not misappropriate a trade secret or infringe upon any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Licensor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. Licensor shall immediately inform Licensee in writing upon becoming aware of any actual, potential or threatened claim of infringement or violation of any intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Software. If such a claim arises or is likely to arise, or the use of any Software is enjoined, then Licensor shall, at its own expense: (i) procure for the Licensee and Governmental Entities the right or license to continue to use the Software at issue; (ii) replace such Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation; or (iii) modify or replace the affected portion of the Software with functionally equivalent or superior Software free of any such infringement, violation or misappropriation. In the event Licensor is unable to fulfill its obligation under (i), (ii) or (iii) above as requested, Licensor shall accept the return of the Software and refund to the Licensee all fees, charges and any other amounts paid by the Licensee with respect to such Software. In addition, Licensor agrees to fully indemnify, defend, protect and hold harmless the Licensee, Governmental Entities and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement with respect to any such claims. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Licensee and shall survive termination of this Agreement.

**6.4** Licensor represents and warrants that the Software shall comply with all applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services, Information Technology Enterprise. Licensor further represents and warrants that the Software and the license rights granted hereunder comply with any applicable federal, state and local laws, rules, regulations, and ordinances in effect as of the date of this Agreement.

**6.5** Licensor represents and warrants that all Documentation will accurately reflect the operation of the Software, to which the Documentation pertains.

**6.6** The licensor represents and warrants that all Software and Enhancements do not and shall not as delivered or provided by Licensor contain an anti-use device, a disabling device, lockup program, a so-called “time bomb” or “drop dead” device, “back door,” instructions, contaminants, viruses, Trojan Horses, worms, cancelbots, or any other mechanism, code or computer programming routine that will disable, damage, impair or impede, lock-up, alter, halt, abnormally end, surreptitiously intercept, expropriate or interfere with the Software, Licensee’s Systems or any data or information of Licensee. Licensor further represents and warrants that all Software and Enhancements do not contain any other programming or device of any kind that would allow unauthorized access to the Software by Licensor or any other person or any Third Party. Licensor covenants that it will not under any circumstance, including enforcement of a valid contract right, (i) install or trigger a lockup program or disabling device, or (ii) take any step that would in any manner interfere with Licensee’s use of the Software or Licensee’s Systems, or restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee’s business. For any breach of this provision, Licensor shall, immediately after receipt of notification of the breach, cure the breach to Licensee’s satisfaction, including, without limitation, repairing, at Licensor’s expense, any damage done to the Software or Licensee Systems or any other property.

**6.7** The Licensor represents and warrants that all Software provided under this Agreement which uses date data shall accurately process data, including but not limited to, calculating, comparing and sequencing from, into, between and among the nineteenth, twentieth and twenty-first centuries, including leap year calculations, integral calculations, day-in-year calculations, day-of-week calculations and week-of-year calculations; and not experience abnormal ending and/or produce invalid or incorrect results in the operation of the Software or Licensee’s System. If the Software is to perform as a system with other hardware and/or software, then this warranty shall apply to the Software as it processes, transfers, sequences data, or otherwise interacts with other software, hardware, components or other parts of the system, provided that such other software, hardware, components or parts do not fail to meet any applicable requirements of this Section 6.7. The remedies available to the Licensee for breach of this warranty include, but are not limited to, repair or replacement of non-compliant Software. Nothing in this warranty shall be construed to limit any rights or remedies of the Licensee under this Agreement with respect to Deficiencies in the Software other than data processing compliance.

**6.8** Licensor’s warranties provided in this Section 6 are in addition to and not in lieu of any other applicable warranties, whether express or implied. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Licensee.

## **SECTION 7. TERMINATION.**

**7.1 TERMINATION BY LICENSOR FOR CAUSE.** LICENSOR MAY ONLY TERMINATE THIS AGREEMENT AND REVOKE THE LICENSE AND OTHER RIGHTS GRANTED UNDER THIS AGREEMENT IF LICENSEE HAS BREACHED THIS AGREEMENT BY FAILING TO PAY IN FULL THE LICENSE FEE SPECIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT OR IF LICENSEE COMMITS A MATERIAL BREACH OF SECTION 9.1 OF THIS AGREEMENT, PROVIDED IN EITHER EVENT THAT LICENSOR FIRST GIVES LICENSEE WRITTEN NOTICE OF THE ALLEGED BREACH AND A SIXTY (60) DAY PERIOD IN WHICH TO CURE THE BREACH. LICENSOR MAY NOT TERMINATE THIS AGREEMENT AND REVOKE THE LICENSE AND OTHER RIGHTS GRANTED HEREUNDER IF LICENSEE’S FAILURE TO PAY ANY PORTION OR ALL OF THE LICENSE FEE OR OTHER AMOUNTS ARISES FROM OR RELATES TO LICENSEE’S WITHHOLDING OR RETENTION OF SUCH AMOUNTS IN ACCORDANCE WITH THIS AGREEMENT [OR THE SERVICES CONTRACT]. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7.1, LICENSOR SHALL NOT BE ENTITLED TO TERMINATE THIS AGREEMENT OR REVOKE THE LICENSE AND OTHER RIGHTS GRANTED HEREIN.

**7.2 TERMINATION OF A SOFTWARE LICENSE.** SHOULD LICENSEE ELECT IN WRITING TO DISCONTINUE USE OF THE SOFTWARE, OR A TERM OR SUBSCRIPTION LICENSE EXPIRES, OR LICENSOR TERMINATES THE LICENSE FOR A MATERIAL BREACH PURSUANT TO SECTION 7.1, LICENSEE SHALL UNINSTALL, REMOVE, AND DESTROY ALL SOFTWARE, AND ANY WHOLE OR PARTIAL COPIES, MODIFICATIONS, OR MERGED PORTIONS IN ANY FORM AND EXECUTE AND DELIVER NOTICE OF SUCH ACTIONS TO LICENSOR.

**7.3 Limitation of the Licensee's Payment Obligations.** In no event shall Licensee be required to pay any amounts other than those expressly stated in Section 5.1 of this Agreement. The Licensee (and Governmental Entities) shall not be liable, under any circumstances and regardless of termination of this Agreement, for any of the following:

**7.3.1** The payment of unemployment compensation to Licensor's employees;

**7.3.2** The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

**7.3.3** Any costs incurred by Licensor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Services Contract;

**7.3.4** Any damages or other amounts for or related to the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement, the Services Contract or any agreement with Third Parties;

**7.3.5** Any taxes Licensor may owe in connection with the performance of this Agreement or the Services Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

## **SECTION 8. INDEMNIFICATION.**

**8.1** Licensor and its successors and permitted assigns shall defend, indemnify and hold the Licensee and Governmental Entities and their employees, officers, directors, agents, and officials (individually and collectively "Indemnitees") harmless from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly related to, resulting from, or arising out of:

**8.1.1** Any violation or breach of any term or condition of this Agreement by Licensor; or

**8.1.2** Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including any claim that the Software or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any Third Party.

**8.2** Licensor's duties as set forth in this Section 8 shall survive the termination of this Agreement and shall apply to all acts taken in the performance of this Agreement regardless of the date any potential claim is made or discovered by Licensee or any other Indemnitee.

**8.3** Licensee shall reasonably cooperate with Licensor to facilitate the defense of any action defended by Licensor. Licensee reserves the right to participate in the defense of any action or claim for which indemnification is provided hereunder.

## **SECTION 9. CONTRACT ADMINISTRATION.**

**9.1 Confidentiality.** Except as provided or contemplated herein, and subject to applicable federal, state or local laws, rules or regulations (including Iowa Code Chapter 22 and [insert citation for the Licensee's Fair Info. Practices rules) the Licensee shall not disclose to Third Parties (excluding Governmental Entities and Authorized Contractors) any information of Licensor that is marked or otherwise clearly identified by Licensor as Confidential Information without the prior written consent of Licensor. Licensor shall limit such identification to information it reasonably believes is entitled to confidential protection pursuant to such applicable laws, rules and regulations. Notwithstanding the foregoing, the Licensee may disclose Licensor's Confidential Information pursuant to: (i) any legal, judicial, or administrative proceedings, subpoena, summons, order, ruling or other legal or administrative processes; and/or (ii) applicable laws, rules, or regulations. In such event, the Licensee shall provide prompt notice to Licensor of the circumstances giving rise to the Licensee's disclosure. Licensor acknowledges that the Licensee is subject to Iowa Code Chapter 22 and other laws, rules and regulations governing public records. If a request is made to view or otherwise

access Licensor's Confidential Information pursuant to such laws, rules or regulations, the Licensee will promptly notify Licensor of the request. Subject to the foregoing, the Licensee will use reasonable efforts to protect Licensor's Confidential Information provided such information can reasonably be determined to constitute a confidential record under Iowa Code Section 22.7 or other applicable laws, rules or regulations. In the event the Licensee reasonably determines that such information is not a confidential record, the Licensee may release such information unless Licensor files an action in Polk County District Court to prevent the release of the requested information within ten (10) days of receiving notice from the Licensee.

**9.2 Amendments.** This Agreement may be amended in writing from time to time by mutual consent of the parties. All amendments to this Agreement must be fully executed by the parties.

**9.3 Choice of Law and Forum.** This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Licensor hereby irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Licensee, including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise. Licensor irrevocably consents to service of process by certified or registered mail addressed to the Licensor's designated agent. The Licensor appoints [name] at [address] Des Moines, Iowa, as its agent to receive service of process. If for any reason the Licensor's agent for service is unable to act as such or the address of the agent changes, Licensor shall immediately appoint a new agent and provide the Department with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Licensee. Nothing in this provision will alter the right of the Licensee to serve process in any other manner permitted by law. This Section 9.6 shall survive termination of this Agreement.

**9.4 Assignment and Delegation.** This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Licensee may assign this Agreement to any State agency or unit of State government that succeeds the Licensee's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Licensee to which the Software relates. Licensor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Licensor or any affiliate thereof without the prior written consent of Licensee.

**9.5 Shrink-Wrap, Click-Wrap and Sneakwrap .** Licensee and Governmental Entities shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, "sneakwrap" agreement, or any other similar agreement that may accompany or relate to the Software.

**9.6 Headings or Captions and Terms.** The paragraph headings or captions are for identification purposes only and do not limit or construe the contents of the paragraphs. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

**9.7 Obligations Beyond Agreement Term.** This Agreement shall remain in full force and effect for the term specified in Section 3 unless terminated pursuant to express terms of this Agreement. Licensor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of

illustration and not by limitation, those obligations set forth in Sections 2, 6-8, 9.3, 9.10, 9.14, 9.18, 9.22, 9.24-9.26, and 9.29-9.30 shall survive termination of this Agreement. [To be reviewed by both parties prior to execution.]

**9.8 Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of Licensee and the Licensors, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

**9.9 Notices.** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to Licensee: \_\_\_\_\_

If to Licensors: \_\_\_\_\_

Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier. From time to time, either party may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

**9.10 Cumulative Rights.** The various rights, powers, options, elections and remedies of Licensee provided in this Agreement shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed Licensee by law, and shall in no way affect or impair the right of Licensee to pursue any other contractual, equitable or legal remedy to which Licensee may be entitled. Licensee's election of any one or more remedies shall not constitute a waiver of the right to pursue any other available remedies.

**9.11 Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

**9.12 Authorization.** Licensors represents and warrants to Licensee that:

**9.12.1** It has the right, power and authority to enter into and perform its obligations under this Agreement.

**9.12.2** It has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself enforceable in accordance with its terms.

**9.13 Successors in Interest.** All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, and legal representatives.

**9.14 Record Retention and Access.** The Licensors shall maintain books, records, and documents which sufficiently and properly document all services and deliverables provided under this Agreement and calculate all charges billed to the Licensee throughout the term of this Agreement for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or completion of any required audit. The Licensors shall permit the Licensee, the Auditor of the State of Iowa or any authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Licensors relating to orders, invoices, or payments or any other documentation or materials pertaining to this Agreement. The Licensors shall not impose or seek payment for any charge, fee or expense associated with any audit or examination of the Licensors's books and records conducted in accordance with this provision.



**9.15 Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

**9.16 Additional Provisions.** The parties agree that if an Addendum, Schedule, Rider or Exhibit is attached and referred to in this Agreement then the same shall be deemed incorporated herein by reference.

**9.17 Further Assurances and Corrective Instruments.** Licensor agrees that it will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

**9.18 Sovereign Immunity.** The Licensee and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations, including, without limitation, Iowa Code Chapter 669 and the Constitution of the State of Iowa.

**9.19** Licensor shall notify Licensee in writing if any of the following has been engaged in by or occurred with respect to Licensor or any corporation, shareholder or entity having or owning a controlling interest in Licensor:

**9.19.1** Licensor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

**9.19.2** Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

**9.19.3** Making an assignment for the benefit of creditors; or

**9.19.4** Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Licensor's performance of its obligations under this Agreement; or

**9.19.5** An order is entered approving an involuntary petition to reorganize the business of Licensor for all or part of its property; or

**9.19.6** If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Licensor is issued by any court or administrative agency against all or any material portion of Licensor's property; or

**9.19.7** Taking any action to authorize any of the foregoing.

**9.20 Material Breaches.** The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

**9.21 Taxes.** Licensor shall be responsible for paying any taxes incurred by Licensor in connection with this Agreement. The State is exempt from the payment of Iowa sales and other taxes.

**9.22 Obligations of Joint Entities.** If Licensor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

**9.23 Time is of the Essence.** Time is of the essence with respect to Licensor's performance of its obligations under this Agreement. Licensor shall ensure that all personnel providing services to Licensee are responsive to Licensee's requirements and requests in all respects.

## **SECTION 10 EXECUTION.**

**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

### **Licensor**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

### **Licensee**

\_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

### **SCHEDULE A**

**DESCRIPTION OF SOFTWARE SUBJECT TO THE SOFTWARE LICENSE AGREEMENT  
AND LICENSE FEES**

## RFP Attachment 13

### Proposed Master Lease Agreement (See also RFP Section 6)

This Lease has been written in "Plain English". When we use the words you and your in this Lease, we mean you, an agency or instrumentality of the STATE OF IOWA, or the customer, which is the Lessee indicated below. When we use the words we, us, and our in the Lease, we mean the lessor, \_\_\_\_\_ and its designees, agents, successors and assigns.

#### 1. LEASE; DELIVERY AND ACCEPTANCE; AND, PAYMENT.

- a. You agree to lease the Equipment described in this Lease ("Products") as shown on a Product Order in the form attached hereto as Exhibit A issued by an agency or instrumentality of yours (the "Purchase Order") on the terms and conditions shown in this Lease.
- b. Both parties (we and you) acknowledge and understand that individual State of Iowa agencies or instrumentalities of you may, from time-to-time, issue a Product Order for Products. The terms of this Lease will govern all the rights and obligations of you and us for each Product Order.
- c. This Lease will become effective on the date this Lease has been executed by both you and us, and upon receipt by us of the Compliance, Certifications and Statements attached hereto as Exhibit B, which substitutes for an executed opinion of counsel; an incumbency certificate from you concerning your officers executing this Lease; a certificate of appropriations for the current fiscal year which will be your fiscal year, beginning on July 1st and ending on June 30th of the next year; and, a statement of self insurance. Your obligation to pay the Lease Payment will begin on the date the Products are accepted by you, in accordance with subsection 1.d below. If the Products are accepted on a date other than the first day of the month, the Lease Payment will be prorated from the date of acceptance to the end of the calendar month in which delivery occurs. Lease Payments will *then* be due on the first day of each subsequent month (*Lease Term Commencement Date*) for the term specified on the Product Order in the form attached as Exhibit A. You will make all payments required under this Lease to us at the address we specify in writing. If any Lease Payment or other amount payable to us is not paid when it is due, interest on the principal unpaid Lease Payment(s) will *accrue at 1% per month in accordance* with maximum rate allowed under Iowa Code.
- d. When you receive the Products, you agree to inspect them to determine if the Products are in good working order. The Products will be deemed accepted by you upon the delivery to us of a signed Acceptance Certificate.

#### 2. FUNDING INTENT.

Each agency or instrumentality of you which issues a Product Order under this Lease reasonably believe that funds can be obtained sufficient to make all Lease Payments and other payments during the term of this Lease for the Product(s) shown on the Product Order. Each agency or instrumentality agrees that its chief executive or administrative officer (or the administrative office that has the responsibility of preparing the budget submitted to your governing body, as applicable) will provide for funding for such payments in its annual budget request submitted to your governing body. If your governing body chooses not to appropriate funds for such payments, the agency or instrumentality agrees to request that your governing body will evidence such non-appropriation by specifically omitting funds for such payments due during the applicable fiscal period from the budget that it adopts. You and we agree that your obligation to make Lease Payments under this Lease will be your current expense and will not be interpreted to be a debt in violation of your applicable law or your constitutional limitations or requirements. Nothing contained in this Lease will be interpreted as a pledge of your general tax revenues, funds or monies.

#### 3. NON-APPROPRIATION OF FUNDS.

If sufficient funds are not appropriated and budgeted by your governing body in any fiscal period for Lease Payments or other payments due under a Product Order(s), and (b) the agency or instrumentality has exhausted all funds legally available for such payments, then you will give us written notice and the Product Order issued under this Lease will

terminate as of the last day of your fiscal period for which funds for Lease Payments are available to the terminating agency or instrumentality. Such termination is without any expense or penalty, except for the portions of the Lease Payments and those expenses associated with return of the Products in accordance with this Lease for which funds have been budgeted and appropriated or are otherwise legally available to the terminating agency or instrumentality.

#### **4. NO WARRANTIES AS TO EQUIPMENT**

WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS". YOU ACKNOWLEDGE THAT WE DO NOT MANUFACTURE THE EQUIPMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT, REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, OR INDIRECT DAMAGES.

We transfer to you for the term of this Lease any warranties made by the Supplier (as defined in this section of the Lease) under any supply contract with respect to the Products that are transferable. Both parties (we and you) acknowledge that you may be entering in one of more separate agreements with the Product's manufacturer, its designated reseller or other authorized entity (collectively Supplier) to provide certain Product services (Services Agreement). Both parties (we and you) acknowledge and agree that the Services Agreement may require the Supplier to make Lease Payments to us directly or indirectly. We agree to accept such payments from the Supplier as if you made such Lease Payment(s). We also agree to reduce any Lease Payment due by you or to become due under the Lease *only* by the amount we *actually* receive from the Supplier. *However, you remain primarily liable pursuant to Section 2, paragraph 2 if any Supplier or Service Agreement Supplier fails to pay* Notwithstanding the foregoing, nothing herein shall be deemed to alter or extend any Lease Payment due date under any Lease.

#### **5. PRODUCT LOCATION; FINANCING STATEMENTS; USE AND REPAIR; AND, RETURN.**

- a. You will keep and use the Products only at the Location(s) shown in each Product Order. You may move the Products within the agency or to field offices of an agency. If requested to do so by us, the agency moving the Products will notify us in writing of the location(s) to which the Products have been moved which notice shall be provided within thirty (30) days of the date of relocation.
- b. At our request, you will sign or obtain and send us any financing statements, waivers or financial information that we reasonably ask for.
- c. At your own cost and expense, you will keep the Products eligible for any manufacturer's certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. You will not make any permanent alterations, additions or replacements to the Products without our prior written consent, which consent will not be unreasonably withheld. With the exception of software and data that will not become part of the Products, other alterations, additions and replacements that have not been removed prior to return will become part of the Product and will be our property (subject to your Lease rights) at no cost or expense to us. We may inspect the Product at any reasonable time during your normal working hours.
- d. Within 10 days of the expiration or earlier termination of this Lease you will, unless you enter into a written renewal agreement with us, based upon our reasonable determination of the then fair market value of the Products, deliver the Products to us in good condition and repair, except for ordinary wear and tear, and upon our request, you will provide us with a certification from the Supplier regarding the Product's condition. You agree to give us 60 days written notice, prior to lease termination, of your intent to renew the lease or return the equipment.

#### **6. TAXES AND FEES.**

During the term of this Lease, we will assume responsibility for filing all property tax returns and paying such taxes. We acknowledge that you are a tax exempt entity.

## **7. LOSS OR DAMAGE.**

As between you and us, you are responsible for any loss, theft or destruction of, or damage to, the Products (collectively "Loss") from any cause at all, whether or not insured, until same is delivered to us at the end of this Lease. You are required to make all Lease payments even if there is a Loss. You must notify us in writing immediately of any Loss. Then, at our option, you will either (a) repair the Products so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) pay us the amounts specified in Section 11(c) below.

## **8. INSURANCE.**

You will provide a statement of self-insurance for property damage and public liability risks with respect to the Products leased under this Lease. In lieu of maintaining an insurance policy(ies) for property damage and public liability, you may self insure against such risks, provided that our interests are protected and we are allowed to make a lawful claim under applicable law for reimbursement in the event of loss or damage to the Product. You will promptly notify us if the law authorizing us to make a claim against you for property damage or public liability changes during the term of this Lease. If we reasonably believe that our ability to make a lawful claim is diminished as a result of the change in the law, we may require you to provide and maintain a policy of insurance for property damage and public liability in reasonable amounts to protect our interests for the remainder of the Lease.

## **9. TITLE; RECORDING.**

We are the owner of the Products. You will keep the Products free of all liens and encumbrances. As a precautionary measure, in the event this is determined to be a lease intended as security with respect to the Product, you grant us a purchase money security interest in the Product (including any replacements, alterations and additions, except software and data). You will deliver to us signed financing statements or other documents we reasonably request to protect our interest in the Product. YOU AUTHORIZE US TO FILE A COPY OF THIS LEASE, TOGETHER WITH THE PRODUCT ORDER, AS A FINANCING STATEMENT AND YOU AGREE TO EXECUTE AND PERMIT US TO FILE, ON YOUR BEHALF, FINANCING STATEMENTS COVERING THE PRODUCT(S). We and you acknowledge that this Lease is not subject to consumer protections or consumer remedies or consumer warranties that may be granted by Iowa or federal law.

## **10. DEFAULT.**

Each of the following is a "Default" under this Lease:

- a. You fail to pay any Lease Payment or any other payment when it is due under this Lease, or
- b. You breach or fail to perform any representations, warranties or agreements under this Lease, and the failure continues for 30 or more consecutive days after we give you written notice of the failure
- c. Any statement, representation or warranty made by you in or pursuant to the Property Schedule or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

## **11. REMEDIES.**

If a Default occurs and remains uncured, we may do *and you agree to do*, one or more of the following:

- a. We may cancel or terminate the Product Order for the agency in default under the terms of this Lease; and
- b. We may require you to deliver the Products to us (*within 10 days*) per Paragraph 5.
- c. If the Equipment has been lost by you or damaged by you beyond its repair, we may require you to pay the amount listed on the Stipulated Loss Table attached to the Product Order.
- d. We may exercise any other right or remedy available at law or in equity.
- e. Our rights are cumulative and non-exclusive.

- f. You shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator, or of all or a substantial part of the assets of yours, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against you in any bankruptcy, reorganization or insolvency proceeding.

## **12. ASSIGNMENT.**

NEITHER PARTY MAY ASSIGN, SELL, OR SUBLEASE THE PRODUCTS OR INTEREST IN THIS LEASE.

## **13. INDEMNIFICATION.**

You are responsible for any losses, damages, taxes, penalties, interest, claims, suits, actions and any attorneys' fees (collectively "Claims"), whether based on a theory of strict liability or otherwise caused by or related to (a) the manufacture, installation, use, lease, possession, or delivery of the Product or (b) any defects in the Product. To the extent allowed by the Iowa Constitution and Iowa law, you agree to reimburse us for, and if we request, to defend us against any Claims.

## **14. AUTHORIZATION AND PRODUCT USE**

You represent that:

- a. You are a state agency or an instrumentality of the State of Iowa; and,
- b. The entering into and performance of this Lease is authorized under your State laws and constitution and does not violate or contradict any judgment, law, order, or regulation, or cause any default under any agreement to which you are a party; and,
- c. You have complied with all bidding requirements and, where necessary, have properly presented this Lease for approval and adoption as a valid obligation on your part; and,
- d. You have sufficient appropriated funds or other moneys available or which will become available, to pay all amounts due under this Lease for your current fiscal period; and,
- e. The use of the Products is essential for your proper, efficient and economic operation, you will be the only entity to use the Products during the term of this Lease and you will use the Products only for your governmental purposes. Upon our request, you agree to provide us with any other documents that we reasonably request, with all such documents being in a form reasonably satisfactory to us, and
- f. You will make a reasonable request for spending authority for the continued funding of the Lease during the budget process before the budget is submitted to the General Assembly.

## **15. CHOICE OF LAW.**

THIS LEASE WILL BE GOVERNED BY THE LAWS OF THE STATE OF IOWA AND ANY LAWSUIT SHALL BE BROUGHT ONLY IN IOWA STATE COURT IN POLK COUNTY, OR IN FEDERAL COURT IN THE SOUTHERN DISTRICT OF IOWA, IF VENUE AND JURISDICTION ARE PROPER IN FEDERAL COURT.

## **16. CHANGES TO LEASE IN WRITING; ENFORCEMENT OF RIGHTS.**

You agree that the terms and conditions contained in this Lease and the Product Order make up the entire agreement between you and us regarding the lease of the Products. This Lease is not binding on either party until both you and us have signed it. Any change in any of the terms and conditions of this Lease must be in writing and signed by both you and us. If we delay or fail to enforce any of our rights under this Lease, we will still be entitled to enforce those rights at a later time, if the claim is within the applicable statute of limitations.

## 17. NOTICES.

All notices will be given in writing by the party sending the notice and will be effective when the notice is received by the other party as shown on the proof of mailing or delivery (such as US Certified Mail, Return Receipt Requested or a delivery receipt signed and dated by the party to whom the notice is delivered) at the addresses shown below (or to any other address specified by that party in writing). All notices will be sent by one party to the other postage or delivery prepaid.

If to Lessor: \_\_\_\_\_

If to the State: Director, Iowa Dept. of Administrative Services, Hoover State Office Building, Des Moines, IA 50319-0105; Fax: 515-242-5974

## 18. MISCELLANEOUS.

- a. The intent of this master agreement is to provide a pre-negotiated instrument for State Agencies and political sub-divisions to obtain operating leases on equipment. Applicable administrative acquisition rules apply to source selection of equipment. See IAC 8/18/04 [11] Ch 105.
- b. This Lease is for the benefit of and is binding upon you, your successors and assigns.
- c. If a court finds any provision of this Lease to be unenforceable, the remaining terms of this Lease remain in effect.
- d. All rights and indemnities will survive the termination of this Lease.
- e. It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest and other charges, as applicable, permitted to be charged or collected by applicable law, and any such excess payment will be applied to Lease Payments in inverse order of maturity, and any remaining excess will be refunded to you.
- f. If you do not perform any of your obligations under this Lease, we have the right, but not the obligation; to pay any amounts that we believe are reasonably necessary to protect our interests. To the extent allowed under the Iowa Constitution and Iowa law, you agree to reimburse us upon our demand for any such amounts that we reasonably pay.

BY SIGNING THIS LEASE: (I) YOU AND WE ACKNOWLEDGE THAT YOU AND WE HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS OF THIS LEASE, (II) BOTH PARTIES AGREE THAT THIS LEASE IS A NET LEASE THAT CANNOT BE TERMINATED OR CANCELED EXCEPT AS SPECIFICALLY PROVIDED HEREIN, (III) EACH PARTY WARRANTS TO THE OTHER THAT THE PERSON SIGNING THIS LEASE ON ITS BEHALF HAS THE AUTHORITY TO DO SO AND TO GRANT THE POWER OF ATTORNEY SET FORTH IN THIS LEASE, AND (IV) YOU CONFIRM THAT YOU DECIDED TO ENTER INTO THIS LEASE RATHER THAN PURCHASE THE PRODUCTS YOU AND WE EXPRESSLY WAIVE ANY RIGHTS TO A TRIAL BY JURY. YOU AGREE THAT THIS LEASE IS NOT FINAL UNTIL SIGNED BY EACH PARTY.

### STATE OF IOWA

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### VENDOR

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A – PRODUCT ORDER

NOTE: This document must be completed and signed by the Agency head or designee (customer/lessee) together with the signature of an appropriate state employee to attest to the truthfulness of the statements. A copy of the executed document and the completed Lease Agreement cover sheet must be forwarded to the Iowa Department of Administrative Services, GSE Purchasing, Hoover Bldg, Level A, Des Moines, IA 50319.

IOWA DEPARTMENT OF ADMINISTRATIVE SERVICES, FOR AND ON BEHALF OF:		Purchasing Agent's Name:	
AGENCY (Customer/Lessee):		Purchasing Agent Ph #:	
CUSTOMER ADDRESS:		Purchasing Agent Fax #:	
		Purchasing Agent's Email:	
DESCRIPTION OF PRODUCTS	<b>Equipment:</b> See attached Product Order Schedule. Additional order forms may be attached to this Lease. (Please Note: Other Supplier Product Invoices may be used provided that they do not alter the terms of this Lease or the Master Services Agreement.)		
<b>TERM AND LEASE PAYMENT SCHEDULE</b>  (The Stipulated Loss Value Table as referenced in section 11 of the Master Lease Agreement must be attached to this document as part of the transaction.)	<b>Lease Term:</b>	<b>Lease Payment:</b>  \$ _____ / _____ Amount / Month or  <b>Payment Includes:</b>  <input type="checkbox"/> Maintenance:  \$ _____  <input type="checkbox"/> Optional Shipping: *  \$ _____	

**Important!!** An Executed Compliance Certifications and Statements (Exhibit B to the Lease) must accompany each transaction. Agencies must complete Compliance Certifications and Statements and attach it to this document.



**\* OPTIONAL PRODUCT RETURN REQUIREMENTS:**

If selected, as soon as practicable following the last day of the Lease Term of this Schedule (and any other time Lessee is required to return all Product to Lessor), but in no event later than ten (10) days thereafter, Lessee shall carefully de-install the Product in accordance with the manufacturer's specifications and guidelines, and deliver the Product to Lessor, for Lessor's pick-up at Lessee's loading dock at Lessee's facilities (individually each a "Designated Pick-up Location" and collectively the "Designated Pick-up Locations"). Tender of Product for return to Lessor shall be made at a mutually agreeable time during Lessee's regular business hours.

Lessor shall cause its authorized carrier to pack the Product, pick up the Product at the applicable Designated Pick-up Location, and to ship the Product, insured, to Lessor's designated return facility(ies). So long as the Designated Pick-up Location is within the continental United States, no Default has occurred, and Lessee tenders at least \_\_\_\_ number of pieces of product per pick-up of product at each Designated Pick-up Location ("Minimum Pickup"), all actual charges from the Designated Pick-up Locations to Lessor's return facility(ies) shall be borne by Lessor; provided, however, that, Lessee shall pay further return charges if any one or more of the foregoing assumptions in this sentence are not applicable as follows:

- a) In the event Lessee fails to tender the Minimum Pickup, Lessee shall pay a minimum charge of \$\_\_\_\_ which shall be payable by Lessee promptly upon Lessor's demand therefore after the return of the Product into Lessor's possession;
- b) If the Designated Pick-up Location is not within the continental United States then Lessee shall pay such other price as customarily charged by Lessor for such location; and
- c) If a Default occurs, Lessee shall pay all actual costs of any Product packing, transportation, in-transit insurance and shipping.

For purposes of this section in respect to this Schedule, the term "Piece of Product" shall mean any one physically separate piece of standard size office or computer equipment, including, without limitation, central processing units (e.g. notebooks) and servers; associated computer equipment, including, without limitation, scanners, monitors, dumb terminals, hubs, routers, printers and related peripherals; and other office equipment, including, without limitation, fax machines, overhead projectors, and desktop copiers. Small, non-serialized computer products, such as a mouse, external drives or cables, and other such accessories shall not be counted as separate Pieces of Product hereunder, and may be grouped in a desktop monitor box as one Piece of Product, and up to \_\_\_\_ keyboards may be grouped together as one Piece of Product. All Products shall be returned to Lessor in the same condition and working order as when delivered to Lessee, reasonable wear and tear excepted, and shall qualify for maintenance service by the Supplier at its then standard rates for Product of that age, if available.

Lessee shall be responsible for, and shall reimburse Lessor promptly on demand for such damaged or missing components and Product based upon the repair costs to qualify the Product for the Supplier's maintenance service or, if not available, to return the Product to good working condition.

**EXHIBIT B**  
**Compliance Certifications & Statements plus Statement of Warranty Agreement**

*NOTE: This document must be completed and signed by the Agency head or designee together (with the signature of an appropriate state employee to attest to the truthfulness of the statements). A copy of the executed document and the completed Lease Agreement cover sheet must be forwarded to the Iowa Department of Administrative Services, GSE Purchasing, Hoover Bldg, Level A, Des Moines, IA 50319.*

**Pursuant to Section 1.C of the Lease Agreement** by and between the Iowa Department of Administrative Services, for and on behalf of \_\_\_\_\_ (Insert Agency Name), an agency or instrumentality of the State of Iowa (customer), and \_\_\_\_\_ (lessor), dated \_\_\_\_\_, this document is attached to and incorporated into the Lease Agreement. By completing and executing this document, the customer and its individual agencies and instrumentalities satisfy the requirements contained in Section 1.C of the Lease Agreement to provide an incumbency certificate from the agency or instrumentality concerning its officer(s) executing this Lease Agreement; a certificate of appropriations or funding authority for the current fiscal year which will be the fiscal year, beginning on July 1<sup>st</sup> and ending on June 30<sup>th</sup> of the next year; and, a statement of self insurance. This document also satisfies the agency's requirement to provide, and substitutes for, an executed opinion of counsel.

The term of the Services Agreement as designated herein (see, *Statement of Term of Services Agreement below*) and as shown on the Product Order Schedule and accompanying invoice(s) is hereby incorporated into and made a part of the Master Services Agreement for the Lease Agreement for which this Exhibit A has been prepared and executed.

**Certificate of Incumbency:**

The undersigned being duly appointed or elected and acting as \_\_\_\_\_ (Title) of \_\_\_\_\_ (Insert Agency Name) does hereby certify that the person(s) listed below is/are authorized to enter into this Lease Agreement with \_\_\_\_\_ (Insert Lessor's Name) and the person(s) listed below is/are duly authorized representative(s) of the customer in the capacity set forth opposite the name(s) and that the signature(s) is/are true and correct and, as of the date hereof, have proper statutory or corporate power and authority to execute and deliver any Lease Agreement between the customer and the lessor, any Product Order Schedules pursuant thereto and the documents required thereunder.

Name (Print or Type)	Title (Print or Type)	Signature

(Please note: you cannot certify your own signature. The signature below must be the signature of someone other than the person(s) named above.)

I hereby attest that the information shown above is true and correct as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Name (Print or Type)	Title (Print or Type)	Signature

**EXHIBIT B**

**Compliance Certifications & Statements plus Statement of Warranty Agreement**

**Certificate of Appropriation/Funding Authority:**

On the date of execution of this document, the agency certifies that it has sufficient appropriated funds or other moneys available or which will become available, to pay all amounts due under this Lease Agreement for the current fiscal period. In accordance with the Lease Agreement the agency will make a reasonable request for an appropriation or spending authority for the continued funding of the Lease Agreement during the budget process before the budget is submitted to the Iowa General Assembly.

**Statement of Self-Insurance:**

The entity named above is an agency or an instrumentality of the State of Iowa. The State of Iowa is self-insured. Lessor may make claims for damage against the agency and the State of Iowa in accordance with the Iowa constitution and Iowa Code chapters 25 and 669, and the rules promulgated thereunder.

**Statement of Term of Services Agreement:**

*(Please Note: The term of the Services Agreement must be stated here.)*

In accordance with Section 1, subsection 2 of the Master Services Agreement, the Services Agreement applicable to the Lease Agreement for which this Exhibit has been prepared and executed will be in effect for a period of \_\_\_\_\_ months/years as shown on the Product Order Schedule and the accompanying invoice(s).

***(Note: The period of the Services Agreement must be the same as the Lease Agreement, unless the agency and the lessor specifically agree otherwise.***

<b>Name of Authorized Agency Representative:</b> (Please print or Type)	<b>Signature of Authorized Agency Representative:</b>
<b>Title of Authorized Agency Representative:</b> (Please print or Type)	<b>Date:</b>

## EXHIBIT C – LEASE WARRANTY AGREEMENT

**WHEREAS**, the State of Iowa (herein "State") and \_\_\_\_\_ (herein "Supplier") enter into this Warranty Agreement concerning warranty coverage for leased products (hereinafter together referred to as a "Unit") being leased by the State of Iowa from \_\_\_\_\_.

**NOW, THEREFORE**, the parties agree as follows:

1. Exhibit A sets forth the terms of the warranty for the leased Units. Notwithstanding anything to the contrary in Exhibit A, all hardware provided by Supplier shall be considered Supplier products for the purposes of warranty coverage.
2. Notwithstanding anything to the contrary in Exhibit A, the State agrees to lease units that meet or exceed the warranty period or the State agrees to purchase an extended warranty to meet the lease term. If the State fails or refuses to purchase an extended warranty, and the lease term extends beyond the warranty period, the warranties in this agreement shall not apply to the period beyond the standard warranty.
3. Supplier warrants that during the term of the product warranty, the Product, under normal use and service, will be free from defects in material and workmanship and shall comply with the applicable Specifications. The foregoing warranties shall not apply to items normally consumed during operation such as, but not limited to, lamps and fuses.
4. Supplier warrants that any installation Services performed by the Supplier with respect to a Product will be free from defects in workmanship for a period of the Lease Agreement. If Hardware is not free from defects in material or workmanship and fails to comply with the applicable Specifications at any time during the Warranty period and Lease term, the Supplier will repair, replace or modify the defective Hardware so that it complies with the applicable Specifications. The warranty service shall be performed at the Installation Site or the Supplier's facility as determined by the Supplier. If Supplier is unable to repair the specific Hardware within Ten (10) calendar days following a notification made directly to Supplier, and after review and determination by Supplier that the Hardware was not repaired and operational within ten (10) calendar days, then Supplier shall pay the State, the *pro rata* daily cost of the Lease Agreement for that specific Hardware item for each day such specific Hardware item is out of use beyond the first ten (10) calendar days following notification directly to Supplier. This shall continue to accrue until the specific Hardware item is repaired or replaced or the Lease Agreement terminates or expires. Supplier's obligation as to this section shall not arise from defects caused by User abuse or neglect.
5. The warranties set forth in this Section shall not apply to any Products where the defect or non-conformance is due to (i) accident, fire, explosion, power failure, power surge or other power irregularity, lightning, alteration, abuse, misuse or repair not performed by the Supplier; (ii) improper storage; (iii) failure to comply with all applicable environmental requirements for the Products as specified by the Supplier or any other applicable supplier, such as but not limited to temperature or humidity ranges; (iv) improper performance of installation, maintenance, operation or other service in connection with the Products, provided that such service was not performed by the Supplier or on the Supplier's behalf; or (v) use in conjunction with an incompatible product as specified by the supplier. THE WARRANTIES SET FORTH IN THIS SECTION SHALL NOT APPLY TO THIRD PARTY SOFTWARE, (PROVIDED HOWEVER THAT THE SUPPLIER SHALL ASSIGN TO THE CUSTOMER TO THE EXTENT OF THE SUPPLIER'S RIGHT TO DO SO, THE WARRANTY RIGHTS GRANTED TO THE SUPPLIER BY THE APPROPRIATE SUPPLIER OF SUCH THIRD PARTY SOFTWARE
6. Unless the Supplier elects to repair or replace defective Hardware at the Customer's facility, all Hardware to be repaired or replaced shall be de-installed, packed and shipped by the Customer in accordance with the Supplier's instructions.
7. The Supplier warrants that the Products leased under the Lease Agreement will: (i) record, store, process, before, on and after December 31, 1999 and when used in accordance with the manufacturer's published Product user documentation covering, installation, use and maintenance as provided by the Supplier; (ii) lose no material functionality or substantially degrade in performance with respect to the introduction of records containing dates before, on or after December 31, 1999; and (iii) solely for the purpose of determining the interoperability of the Products with other equipment regarding the subject of Year 2000 readiness, the Products

will be substantially interoperable with other equipment provided such equipment exchanges data with the Products in accordance with the manufacturer's specifications.

9. Performance of the Services by the Supplier shall comply with all substantive requirements of applicable federal or national laws, state or provincial laws, municipal and local ordinances and regulations in effect on the date of execution of this Agreement as well as industry standards for the performance of such Services; provided that the Customer shall have performed its responsibilities. If there are any violations of such laws or regulations (of which the Supplier had been notified by the Customer) due to the Supplier's action or inaction, the Supplier shall correct the violation at its sole expense.

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

**State of Iowa**

**Supplier:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Printed  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Additional Warranty Documentation Attached and Incorporated Herein \_\_\_\_ yes \_\_\_\_ no.